

A

**TRIAL**  
OF  
**JOSEPH N. CARDINAL,**  
AND OTHERS.  
TO WHICH ARE ADDED,  
THE  
**ARGUMENTATIVE PETITION**  
IN FAVOUR OF THE  
**PRISONERS,**  
AND SEVERAL OTHER PRECIOUS DOCUMENTS,  
&c. &c. &c.

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BY A STUDENT AT LAW.

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**MONTREAL:**  
**JOHN LOVELL, PRINTER,**  
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**TRIAL**  
**OF**  
**JOSEPH NARCISSE CARDINAL,**  
**AND OTHERS.**

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*Wednesday, 28th November, 1838. (10 A. M.)*

Before a General Court Martial, convened on this day, at the Court House in the City of Montreal, in pursuance of an order and by virtue of a Warrant from His Excellency Sir JOHN COLBORNE, G. C.-B. and G. C. H. &c. &c.

*Present, the following Members:*

Major General John Clitherow, *President.*

Lieut. Col. Sir John R. Eustace, *2d Batt. Grenadier Guards.*

Lieut. Col. Henry W. Barnard, *do. do.*

Lieut. Col. William Grierson, *15th Regiment.*

Lieut. Col. James Crawford, *2d Batt. Grenadier Guards.*

Major Samuel Dilman Pritchard, *Major of Brigade.*



Major Henry Townshend, *24th Regiment.*

Major Arthur W. Biggs, *7th Hussars.*

Captain William Brudenell Smith, *15th Regiment.*

Captain Robert Marsh, *24th Regiment.*

Captain William Thornton, *2d Batt. Grenadier Guards.*

Captain Henry Alex. Kerr, *2d Batt. Royal Regiment.*

Captain Augustus Cox, *2d Batt. Grenadier Guards.*

Captain the Hon. George Cadogan, *do. do.*

Captain Hugh A. R. Mitchell, *do. do.*

The Hon. Dominique Mondelet, Esq., Charles Dewey Day, Esq. and Captain Edward Muller, 2d Battalion Royal Regiment, jointly and severally Deputy Judge Advocates.

Messrs. Pierre Moreau and Lewis Thomas Drummond are employed on behalf of the Prisoners.

John Godard, Esq. Advocate, is appointed Translator, and Mr. Francis Johnson, Student at Law, performs the duty of Reporter.

Serjeant John Wilson, 1st Royal Regiment, Provost-Marshal, and two Orderly Serjeants.

The following prisoners, twelve in number, are brought to trial :—

Joseph Narcisse Cardinal, Joseph Duquette, Joseph L'Ecuyer, Jean Louis Thibert, Jean Marie Thibert, Léon Ducharme, otherwise called Léandre Ducharme, Joseph Guimond, Louis Guérin dit Dusault, otherwise called Blanc Dusault,

Edouard Thérien, Antoine Côté, François Maurice Lepailleur and Louis Lesiége, otherwise called Louis Lesage dit Laviolette.

The charges exhibited against them, are read by the Judge Advocate, in the following terms, to wit:—

“TREASON AGAINST OUR SOVEREIGN LADY THE QUEEN, between the first and seventh days of November, in the second year of the reign of our said Lady the Queen.

In this, that the said Joseph Narcisse Cardinal and others, being subjects of our said Lady the Queen, on the fourth day of November, in the second year of the reign of our said Lady the Queen, and on divers other days, as well before as after, in the said parish of Chateauguay, and also at Caughnawaga, commonly called Sault St. Louis, in the District and Province aforesaid, did meet, conspire, and agree amongst themselves, and together with divers others whose names are unknown, unlawfully and traitorously to subvert and destroy, and cause to be subverted and destroyed, the Legislative Rule and Government now duly established in the said Province of Lower Canada, and to depose and cause to be deposed our said Lady the Queen, from the Royal State and Government of this Province, and did for that purpose then and there incite and assist in a Rebellion in the said Province; and then and there being assembled and gathered together, and armed with guns, swords, spears, staves and other

weapons, did in furtherance of the said Rebellion, traitorously prepare and levy public war against our said Lady the Queen, and were then and there found in open arms against her Rule and Government in this Province, against the peace of our said Lady the Queen, her Crown and dignity, and against the form of the Statute in such case made and provided."

Before pleading to the charge, the prisoners submit to the Court the following Exceptions, which are read by the Judge Advocate, and overruled after a deliberation of about half an hour:—

PROVINCE	}	THE QUEEN,
OF		<i>vs.</i>
LOWER CANADA.		JOSEPH N. CARDINAL & AL.

"The undersigned, who have been brought forward for the purpose, as they have been informed, of being tried upon a charge or charges of Treason, (respectfully reserving the right of objecting to the competence of the Tribunal assembled to try them;) insisting that in their case, the ordinary Laws of the Province cannot be repealed, nor the ordinary tribunals suspended; insisting also that the Legislature, under the authority of which the present Court is constituted, has been expressly restrained by the Act of the Imperial Parliament of the 1st Victoria, cap. 9, from departing in any way from the practice of administering the Criminal Law of England, as introduced into this Province, by the Act of the

Imperial Parliament of the 14th Geo. III. chap. 83, or any of the various Legislative expositions of that Statute, by different laws enacted since that period ; and contending that the offence or offences with which they stand charged, are cognizable only by a Jury of the country, and that by the mode of trial and the means resorted to, upon the present occasion, they might be deprived of all constitutional means of defence, in which are included the right of the accused to have a list of the Jury, to give him the benefit of the challenge ; the list of witnesses to enable him to detect conspiracy and to prevent perjury ; a copy of the charge, *at least ten days before the day of trial*, to enable him to prepare himself for the *awful day* ; sufficient time to procure the assistance of a legal adviser, to speak for an unlearned man ; in fact, all the arms and means of protection, with which the humanity of the Laws of England fortify the prisoner ; beg leave to urge upon the attention of the Court, that according to the practice of Courts constituted as the present, the accused are entitled to the following safeguards :—

1st. The crime or offence must be set forth with certainty and precision, including time, place and circumstances ; in all which the written accusation communicated to them, is defective.

2nd. The charge must be furnished in such time before the meeting of the Court, as that the accused may have full opportunity for preparing their defence. In fact, an Act of the Imperial

Parliament of the 3rd and 4th Anne, cap. 16, has expressly provided that "persons tried by Courts Martial, *shall have the benefit of the Act for regulating trials in cases of Treason and misprision of Treason,*" thus securing to the party charged, an interval *of at least ten days, between the service of notice of trial and his arraignment*; whereas the charges were only communicated to them on the 24th day of November instant, at a late hour in the evening, and their trial fixed for the 28th day of the same month, in contravention with the practice of Courts Martial on that point.

3rd. The accused are entitled to a list of the witnesses to be heard against them. Such has been withheld from the prisoners.

4th. They are entitled to a list of the persons appointed to sit in Judgment upon them. No such list has been furnished to the prisoners.

5th. The accused are entitled to freedom of intercourse with their relatives, connexions and friends, whilst engaged in preparing for their trial. The relatives, connexions and friends of the prisoners, have been and continue to be denied all access to them. They have been treated as criminals, whose guilt had been taken by anticipation, and the restraints unjustly and illegally imposed upon them, have impaired their means of defence.

The prisoners accordingly claim the consideration of the Court to the matters submitted, and request that all proceedings may be deferred, un-

til the benefits, which the practice of Courts Martial constituted as the present and for the like purposes, secures to the parties accused, shall have been extended to them."

Montreal, 28th November, 1838.

(Signed,)

JOSEPH N. CARDINAL, &c.

The prisoners having no objection to any member of the Court, severally plead *Not Guilty*, and Captain Muller then addresses the Court as follows, on the part of the prosecution :—

*May it please the Court,*

"The prisoners before the Court are charged with the crime of Treason, in having conspired to depose Her Majesty from the Government of this Province, incited a Rebellion for that purpose, and, in furtherance of such Rebellion, having stirred up and levied a public war. The crime is in its character and consequences, the greatest which a man can possibly commit, and as it does not frequently come within the cognizance of a Court Martial, it may be advisable to submit to you a brief definition of the distinct heads of the offence of High Treason, under which, it is conceived, the prisoners fall; then, to call your attention to the specific acts to be proved, that thus you may be enabled to see how far these acts come up to the legal definition of the crime. The Law of Treason, then, in so far as its provisions are likely to be applicable to the case be-

fore the Court, declares that when a man doth compass or imagine the death of the King, or if a man levy war against the King in this realm, he shall be adjudged guilty of Treason: but in order to bring him within the operation of the Law, he must be convicted of open deed, or overt act, clearly amounting in its indication and character, to a compassing of the King's death, or levying of war against him. As to what overt acts, or in more familiar language, what conduct on the part of the accused, will bring them within these branches of the offence, we have a precise and sufficient guide; for on reference to the best authorities on the subject, we find a variety of overt acts specified, among which we select as useful to our present purpose: 1st. The deposing or taking possession of the King or Government, or preparing to do it. 2d. The direct levying, and consulting to levy war. 3d. Joining with Rebels in any act of Rebellion. 4th. Giving assistance or intelligence to Rebels. 5th. Constructive levying war by insurrection to reform supposed national grievances. If any of these acts be brought home to the accused by the evidence of two witnesses, the Court will be called upon, in the conscientious discharge of its stern and important duty, to declare them guilty of High Treason.

Now the facts which will be proved against the prisoners, are briefly these:—that they, with a large body of armed men, were\* assembled at



Chateauguay on the fourth of this month ; that they took a number of prisoners whom they kept confined ; that there existed among them degrees of command and other features of organization, which characterize a regular army ; that they avowed an intention to subvert the Government of Her Majesty, and to establish a Republic in its place ; that they proceeded from Chateauguay to Caughnawaga, and there demanded the arms of the Indians, with the intention above avowed ; and generally that they, with those by whom they were accompanied, were in intelligence and concert with Rebels in other parts of the Province, and were engaged in acts of open warfare and Rebellion against Her Majesty's Government here. It may be added that the men selected for trial to-day, appear to have held stations of command, and to have exercised great influence among their companions.

With this explanation, and these facts fully proved, the Court, it is presumed, can have little difficulty in forming an opinion upon the guilt or innocence of the unfortunate men now before it."

The first Witness on behalf of the Crown, is called over and examined as follows :—

**JOHN LEWIS GRANT.**—Resides at Lachine. Knows the prisoners Cardinal, Duquette, Ducharme, Lepailleur and Jean Marie Thibert, the last of whom he, the witness, took himself. On Saturday, 3d November, embarked on board the steamer at Lachine, on his way to Mr. John



M'Donald's at Chateauguay. When arrived at Mrs. Duquette's, of Chateauguay, inn-keeper, Duquette, at the head of about twenty or thirty armed men, put his hand on his (witness's) shoulder and made him a prisoner. Duquette was a Chief; his mother said so in his (witness's) presence. Believes he was not armed, when he took him. Asked what all this meant, and was told by Duquette, not to be uneasy; that in two or three days a body of Americans was coming in, and that he, (witness,) would be as free and independant as themselves. Duquette added he was unwilling to do him any harm. Was taken into a bedroom, where he saw Lepailleur, Newcombe, Desmarais, and several other persons, armed with guns and pikes. Saw no other of the prisoners there; was searched and a pair of pistols taken from him; a guard was placed over him by order of Duquette, and orders given that he should be treated kindly. In the night, Cardinal came to the house and removed him to his, (C.'s) office, where the witness found J. M'Donald a prisoner; was escorted by a band of armed men, apparently commanded by Cardinal; believes Cardinal was not armed himself. Was kept confined with M'Donald, till Sunday afternoon, 4th November; was then removed to one Mallette's, opposite Chateauguay bridge, where he found Messrs. Ellice, Brown, Norman, Bryson and others, who, as he understood, had been made prisoners at Beauharnois. On the Sunday and

Monday, saw from 200, to 300 men, armed; but recognized none of the prisoners, as forming part of the band. On a report that the Indians were coming, they seemed to be in an uproar and flew to the Church. On Saturday week from the day on which he, (wit.) was taken, Newcombe and others, (but none of the accused,) took him with the rest of the prisoners, tied them two by two, put them into carts and conducted them to a place called *La Pigeonnière*, (20 miles from Chateauguay,) under an escort of 200 people. On arriving at that place, report was made that the Rebels had been defeated at Napierville, upon which they were released and severed.

Questioned by the Court.—Never had any communication with the prisoners; considers Cardinal as the principal leader; was kept prisoner in his office. Recollects having seen Ducharme with one Brault, on his arrival at Chateauguay; both were armed with guns, and were welcomed by the Rebels. Thinks their intention was all that is bad. Duquette, Lepailleur and one Desmarais, said plainly that the Americans were coming to take possession of the country; that there would be a general rising that night, (Saturday, 3d,) and the Government overthrown. Observed degrees of command among the men by whom he was made prisoner: they mounted guard with an officer, and were organized as a military body; was taken on the 3d, towards 9, in the evening. Knows nothing of the expedition

of Caughnawaga. The individuals of whom witness has been speaking, reside at Chateauguay. Saw them but through the chink of the window, and heard them speak; cannot say that he saw any of the prisoners armed, except Ducharme.

Questioned by Mr. Cardinal.—Did not hear Cardinal give any orders to the armed band; does not know whether it was, or was not, at Mr. M'Donald's request, that Cardinal came and removed him, (witness,) from Duquette's. Cardinal did not come, when sent to for an interview.

— By Mr. Duquette.—It was by Duquette's orders, that sentries were put to guard the witness.

— By J. M. Thibert.—Does not exactly recollect the day he, (witness,) took him; but it was in the forenoon, some days after his release. He, (witness,) went out with M'Donald and one of the Lachine Cavalry, purposely to take him at his own house at Chateauguay.

JOHN M'DONALD.—Resides at Chateauguay. Knows all the prisoners. (Here witness advances and identifies them, one after another.) On the night of Saturday, 3d November, at about ten o'clock, was in bed; heard a great noise and shouting out doors. Got up, and saw through the window about a hundred armed men, who surrounded his house; asked what they wanted at an hour so undue, and in such numbers. Jean Louis Thibert answered they were going to declare their independance that night.

Refused to open, till he knew what they wanted of him. Jean Louis Thibert replied : "open the door, surrender yourself, and I will save your life ; if not, we will fire and destroy the house." Went to the door with his servant boy, who advised him to resist, saying they had a sword and a gun to defend themselves ; forbade him to fire, saying they were too numerous for them to offer any kind of resistance. The band made a great deal of noise round the house, and knocked repeatedly at the front and back doors. Told his servant boy to hide himself under the bed, and if possible, to secrete his horse on the opposite side of the river, and inform Mr. Ellice that he had been taken. Opened his door and a great number of men, headed by J. L. Thibert, rushed into the house. Witness recognized but Thibert, who followed him into his bedroom, and requested him to deliver up his arms. Witness answered he had nothing but the gun he actually wore with him, his servant boy having taken away his sword, in concealing himself under the bed. J. L. Thibert requested him to dress himself, and to follow him to his store ; he was armed with a sword. Arrived at the store, Thibert ordered him to deliver up all the gun-powder and shot he had in his possession. Gave him a canister containing 25 lbs. of gun-powder, and about 50 or 60 lbs. of shot, being all that he had. On returning to his house, Thibert insisted that he had some more arms. Answered they might look for them, if they wanted.

Researches were made from the cellar to the garret; but nothing was found. Some person of the crowd, (does not know who,) said they must tie him. Thibert, who appeared to act in every thing as the Chief, told him if he would make himself easy and follow them, he would not be tied. He then took him by the arm and conducted him to the Rebel Camp, near Chateauguay bridge. On going down, the band increased from 200, to 300 men, all armed with guns, pikes, &c. and taking prisoners all the British inhabitants on the road. One M'Lean, amongst others, having concealed himself into his chimney, Thibert asked his wife where he was. She answered she knew nothing about it. From the conversation the Rebels had amongst themselves, they appeared to know that M'Lean was not absent. Thibert then ordered one Barthélémi Giroux to light up a candle and put fire to the barn, if M'Lean did not come out; upon which witness intreated Mrs. M'Lean not to suffer that her barn should be set on fire, but tell where her husband was. She then pointed to the chimney and I called out for M'Lean. He came out and Thibert made him a prisoner in very harsh terms. Thibert, of all the prisoners, was the only one present. Together with others, Thibert asked Mrs. M'Lean for a rope; she gave them one; and M'Lean was tied, his hands behind his back. Having left M'Lean's, Thibert commanded witness to go with the vanguard, for the purpose of advising all the loyal

inhabitants to surrender themselves, in order to have their lives saved ; which he did, by knocking, one after another, at their windows, on his road. On their arrival at the camp, the prisoners, nineteen in number, were taken to the office of Cardinal, during the night of Saturday to Sunday. Saw there, under arms, Lepailleur, Duquette, Guérin, L'Ecuyer and Thérien. Cardinal had sometimes a sword, and sometimes a gun ; he appeared to be the chief, and gave orders. A consultation was held, the result of which ended in the discharge of all the prisoners, except Grant and witness. Cardinal was the person who discharged all the others. Asked Cardinal to permit him to go under an escort, for the purpose of securing his books and papers ; he refused, or answered *he would see* ; then asked him why he was the only prisoner detained. Cardinal answered, he, (witness,) was the only one wanted ; he added, that Grant was also a prisoner, and that he had been taken with a pair of pistols upon him. Requested Cardinal to put him together with Grant ; which was refused by Cardinal, alledging that Grant was intoxicated, and made a great deal of noise. Grant was drunk, and was very much excited. Cardinal went out, and returned in the course of half an hour. Witness repeated his demand ; he left again, and came back with Grant. The latter had tears in his eyes, and related the shameful manner in which they had been taken.

(The Court being near adjourning, the prison-

ers submit a motion to the effect that a list of the witnesses for the prosecution be handed to them, accompanied with the place of their residence, and their respective qualifications. The motion is rejected, and the Legal Advisers respectfully insist upon its being enregistered; which the Court refuses, upon the ground that it is not customary to enter or receive any such applications.

And the Court is adjourned till tomorrow morning, at ten o'clock.)

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*Thursday, 29th November, 1838. (10 A. M.)*

After the calling over of the members, the examination of Mr. M'Donald is continued :—

Sunday morning, at dawn of day, saw, in Cardinal's office, Ducharme, armed, and Antoine Côté, armed with a sword. Also saw there Guimond, under arms. They all appeared to come to Cardinal, and receive orders from him. During the morning of the same day, saw L'Ecuyer, Jean Marie Thibert, Ducharme, Lesiége and Thérien, under arms, drilling and giving orders. Between eleven and twelve o'clock, on the same morning of the 4th, there was a great bustle amongst the Rebels; they said between themselves that the Indians were coming in. A short time after, Mrs. Cardinal came into the house, with tears in her eyes. Witness asked the reason; she did not answer him, and left the house in the course of half an hour. Understood that some of the Rebels had gone to Sault St. Louis. His impression is

that Cardinal, Côté, Lepailleur, Duquette, Guimond, Guérin and J. L. Thibert had been taken prisoners by the Indians, inasmuch as he did not see them since, except in prison. Saw after, under arms, during the whole time he was detained a prisoner, L'Ecuyer, J. M. Thibert, Lesiège, Ducharme and Thérien. Saw Ducharme taking the most active part, and pushing the people with his gun. Sunday morning, the 4th, saw Messrs. Ellice, Brown, Ross, Norman and Bryson, all of Chateauguay, in Mr. Brown's carriages, escorted with about thirty men, all armed. On the Monday or Tuesday following, saw L'Ecuyer and Ducharme, at the head of ten or twelve men, taking Mr. Ellice and others to Mallette's, on the opposite side of the bridge. A few minutes after, Ducharme came to him, and told him that he, (witness,) would be put with the other prisoners, according to his request. Was then taken to Mallette's under an escort, which he, (Ducharme,) commanded. There were eleven prisoners in all. Arrived at that place, the window shutters were closed up. One morning, one of the shutters being thrown open by accident, witness saw Ducharme at the head of about a hundred men, whom he was commanding and putting through various manœuvres. After he had dismissed them, Ducharme perceived the shutter was off. Witness heard him reprimand very hard the sentinels around the house, and order them to fire at the first who would open a window shutter; after



which, he personally closed the shutter. The following morning, the servant man having opened one of the windows in the rear of the house, Mr. Ellice got near it to look outside. One Loïselle, who was then on guard, cocked his gun at him; witness perceived this, and dragged him aside, saying: "My God! they'll shoot you!" Were then kept in greater obscurity, with no other light than candles. On Saturday, (10th,) Ducharme came in, and said that the Americans had arrived, had taken possession of Napierville, and that they should go thither, as it was the *Grand Camp*. Were then tied two by two, with the exception of Mr. Ellice, and taken, under an escort, to a place called *La Pigeonnière*, into the house of one St. Germain. Saw L'Ecuyer forming part of the escort; he was armed, and commanded. Also saw there J. M. Thibert, Ducharme, Lesiége and Thérien.

Questioned by the Judge Advocate.—What was the avowed intention of the body of armed men?

Answer.—To subvert the Government, and declare their independence. Cardinal and J. L. Thibert expressly declared so; Cardinal added, that on that night, (the night of the 3d,) the whole Canadian population had risen, and would be in possession of the country, except Quebec.

Question.—Can you specify the rank and respective degrees of command amongst the prisoners?

Answer.—Can't. Only heard from J. L. Thibert, that Cardinal and Duquette were the Great Chiefs.

(Here the evidence of this witness is closed; and the Court enjoins Mr. McDonald to remain from day to day, in case he should be examined upon the defence.)

GEORGE ORONHIATEHKA DE LORIMIER.—Resides at Caughnawaga. On the morning of the 4th, at about half-past eight, witness was in his bedroom, when he perceived a man who entered his grand room. Went out, and saw one Ignace Giasson, an uncle to his wife, who told him that the *Patriots* had arrived into the wood of Caughnawaga. He told witness not to say a word about it, and retired. Saw, in the meantime, Cardinal and Bruyère, who entered his shop. Introduced them into the company room, and drank a glass with them. Asked them what they wanted so early in the morning. They replied they had come to see the Chiefs, in order to get from them the arms of the Indians; asked witness if there was any means of obtaining them, and what number did they amount to. Witness told them there were about thirty. Cardinal replied it was not worth coming so far for, and retired, saying he was going down the village, to recover some money from Mr. Charles M'Comber. While dressing himself, witness saw Duquette enter his shop, and speak to his clerk. (Here witness identifies the prisoner, by pointing him out with his finger.) Went into the yard, and

saw one Meloche, who appeared to form part of the band; retired, not to have any conversation with him. Knowing not what to do, witness called at the Priest's, in performance of his duty. When out doors, met with an Indian, who told him that the enemy, (meaning the Canadians,) were coming in; entered the chapel, and informed the Priest of it, whilst the latter was saying mass; then got into the church, called the Indians out, and told them to arm themselves, and prepare to receive the enemy. They went and fetched their arms; in the course of five minutes, they were all armed and assembled near the May-pole. Ten Indians, (of whom witness was one,) were sent forward unarmed. Arrived at the Chapel of the wood, they saw Lepaillieur with an Indian, who had a pistol in his hand. Lepaillieur asked witness why his pistol had been taken away from him; he added, his intention was not to do any harm to any body. In the meantime, a great number of Canadians, armed with guns, spears, staves, &c., surrounded them. Witness recognized none of the prisoners, except Lepaillieur, to form part of the band. Asked them what they wanted, saying they were suspected by him. They answered they would do them no harm, but were desirous of seeing the Chiefs, to get the arms of the Indians. Witness told them he knew nothing about it; that three or four of them might come as far as the first house in the village, to ask the arms of the Chiefs; they all came. Arrived at that place,

the Indians who were in ranks, surrounded the Canadians, disarmed them, and made them prisoners; after which, they put them into boats, to take them to town. An hour after this, saw Cardinal, Duquette, and others, who were brought up as prisoners by the Indians.

Questioned by the Judge Advocate — Did Cardinal make use of any expression of fear or regret, during the conversation he had with you, on the morning of the 4th?

Answer.—Witness asked him what was to become of him, if they should not succeed in their enterprise. Cardinal replied, in jest: "I think I will be hung; (*je crois bien que je serai pendu.*)" The Canadians said, if the Indians would give up their arms, they would not disturb them, and would leave them their Seigniory. They also said that Beauharnois and all the southern shore of the St. Lawrence, had been taken, and that St. John's, *Isle aux Noix* and Laprairie were to be taken. The band was coming from the direction of a place called *La Fourche des Deux Chemins*, (the fork of the two roads,) one leading to Sault St. Louis, and the other to Chateauguay.

Questioned by the Prisoners.—Those of the prisoners whom you pretend to have seen with the band, do they live at Chateauguay?

Answer.—Lepailleur lives at Chateauguay, Duquette also.

Question.—Were Cardinal and Duquette with the band at Caughnawaga?

Answer.—No.

Question.—Was there any other of the prisoners at Sault St. Louis?

Answer.—Did not recognize any other, except those already mentioned.

Question.—Did you see there Guérin dit Blanc Dusault?

Answer.—Cannot say that he saw him; only heard that he was there.

Question.—Did you see Cardinal and Duquette, after they were made prisoners?

Answer.—Saw those prisoners in the house of an Indian, Louis Shakohontata.

IGNACE DELILIE, *alias* KANERATAHERE.—Knows the prisoners Cardinal, Lepailleur, L'E-cuyer, Lesiége and Duquette. Never knew Ducharme, nor J. M. Thibert, nor Guimond, even by sight. Knows J. L. Thibert merely by sight; but doesn't know his name, nor that of any of the other prisoners. On the morning of the 4th, saw Lepailleur, Duquette and Guérin, at Sault St. Louis; the two first were prisoners, when he saw them. It was about seven in the morning, when the Chiefs, accompanied by some of the young men, came to see witness at his own house, to hear the news from the town, he having been there the night before. Joseph Duquette came to witness's house, about eight o'clock, and asked him where Charles Giasson lived. Duquette also asked witness, if the hay he had bought from him was ready; answered yes. He said he would come and

fetch it the following day. One of the Chiefs went out at the second bell, and returned, saying that a woman had announced the arrival of the Rebels, and that they were within a mile of the village. The woman protested she had seen them herself. The Chief ordered witness to take up arms. A man was sent on horseback, and confirmed, on his return, the woman's report. He said the wood was full of armed men, and added: "let us arm ourselves." De Lorimier said: "Don't take up arms; we had better go without." They then went, six in number. On their arrival at the wood of Sault St. Louis, witness saw Lepailleur at the Chapel door, with another whom he does not know. As soon as they arrived there, the Rebels ran away towards Chateauguay. Lepailleur was arrested by one of them, and said he was coming from Laprairie. Witness enquired the reason of the armed band. Lepailleur answered, their intention was not to injure any body; that they only wanted the arms of the Indians. He had a shot bag on his shoulder. They advanced to take it from him, when he drew from under his coat a pistol charged with two balls. As soon as he made this motion, the party seized him. The person who accompanied Lepailleur, in the meantime, ran towards his party, and, at the distance of three acres from where the Indians stood, called on his people, who rushed forward; they amounted to about a hundred men, all armed. Lepailleur then told witness: "Don't fear, Ignace;

we will do you no harm ; lend us your arms ; you will be well rewarded, and we will sign you a paper for them." Witness answered, he was not the master, and that they might come and consult the Chiefs themselves on the subject. Lepaillieur replied : "You can interpret well, and use your influence for us ; if the Government be not pleased, we will protect you." Witness answered, he could not do any thing. The Rebels then surrounded the Indians, and pointed their guns at them. One out of the crowd cried out : "Lepaillieur, we are ready ; give the word." Lepaillieur replied : "Be quiet, my friends, we are not ready yet. I will go with Ignace, and ask the Chiefs if they will lend their arms." He added, speaking to witness : "Don't make me a prisoner ; we will do you no harm." Lepaillieur then came to him ; they met the Chiefs on their way to the village. Witness explained to them Lepaillieur's proposal ; they said : "We shall only give them up with the last drop of our blood, the Government having given them to us alone." They then ordered the Canadians to be surrounded and disarmed, against the consent of De Lorimier, who advised them not to do so. Witness came to Montreal, a little while after, to inform the Government of what had happened, and notify the Lachine Dragoons to keep themselves ready to take them to town.

Questioned by the Judge Advocate.—What did the Indians conceive to be the object of the Canadians ?

Answer.—They thought they came to make war upon them.

Question.—Did the Rebels say that any other force was coming to assist them?

Answer.—A man who fled, said that there was.

Question.—Why do you call the persons who came to Caughnawaga, Rebels?

Answer.—They were sometimes called *Patriots*, sometimes *Rebels*.

Question.—What did you think of the expression: "we are ready?"

Answer.—Thought they were done; for Lepaillieur did his best to restrain his people at these words. Amongst those who were taken prisoners at Caughnawaga, recognizes Lepaillieur and Guérin. Duquette was taken afterwards. Witness himself took the two first, as having formed part of the band; as to the last, he did not form part of it; but he was taken on Sunday the 4th.

Questioned by the Prisoners.—Did not see Duquette, since he came to his house, until he saw him a prisoner at Montreal.

Here the Court is adjourned till tomorrow morning, at ten o'clock.

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*Friday, 30th November, 1838. (10 A.M.)*

The examination of the witnesses on behalf of the Crown, is continued.

JOSEPH TENIHATIE.—(The witness understanding neither English nor French, the Court is obliged to have an interpreter for him.)—Knows



Cardinal, Duquette and Lepaillieur. Knows Thérien and L'Ecuyer by sight; does not know their names. (Here witness identifies these two last prisoners.) On the 4th of November last, saw Lepaillieur, Thérien and L'Ecuyer at Sault St. Louis, near the Chapel. Did not see Cardinal there, nor Duquette. Saw the two last at Caughnawaga, on the morning of the 4th, at about ten o'clock, in the house of an Indian. When witness saw Lepaillieur, L'Ecuyer and Thérien, they were with a band consisting of about eighty men, armed with guns, spears, &c. They wanted to borrow the arms of the Indians.

Question.—Are you personally acquainted with Cardinal, Duquette and Lepaillieur?

Answer.—Knows Cardinal and Lepaillieur perfectly well; is but very slightly acquainted with Duquette.

Question.—Were any of the prisoners armed, when you saw them, on the 4th?

Answer.—Saw in the hands of Lepaillieur, a pistol, which was taken from him. The others were not armed.

Questioned by Thérien.—Did you see me at Caughnawaga; and if so, state when?

Answer.—Did not see Thérien there.

— By L'Ecuyer.—Were there any other individuals with me, at the time when you pretend to have seen me, near the Chapel, at Caughnawaga?

Answer.—Saw only Lepailleur near the Chapel; did not see L'Ecuyer there.

(Here the Court interposes; and presuming that there must be some error in the interpretation, orders the witness himself to touch the individuals whom he saw on Sunday the 4th, at the Chapel of Caughnawaga.)

Witness.—Saw near the Chapel, on the 4th, Cardinal, Duquette and Lepailleur.

Questioned by Cardinal.—At what o'clock, where, and with whom did you see me at Caughnawaga, on the 4th?

Answer.—It was between half-past nine and ten o'clock, that witness saw Cardinal. He was then in the house of an Indian, in the village.

PIERRE REED, (son of Antoine.)—Resides at Chateauguay. On the night of Saturday, the 3d of November, the *habitans* of Chateauguay rose to go and demand the arms of the Indians at Sault St. Louis. Witness did not hear any of them say that they wanted to do any harm. J. M. Thibert, together with several others, came to witness's house, and took him to Blanc Dusault's, at the extremity of Chateauguay; did not know where they wanted to conduct him. Arrived at Dusault's, they found Desmarais; witness was desirous of returning; he, (Desmarais,) said that they would fire at the first one who would endeavour to run away. It was then so dark, that witness could not distinguish how many persons were there. From Dusault's, they went to the Church, where

they remained during the space of two hours ; after which, they proceeded to one Samson's, towards the lower part of the river. They left Samson's about an hour before daylight, to go to the Sault. They went as far as Caughnawaga, where a great many of them fled, and witness is one of those who surrendered to the Indians. They were about sixty ; cannot swear positively as to the number.

Questioned by the Judge Advocate,—Were the men with whom you went to the Sault, all armed ?

Answer.—No ; there were about thirty-six guns ; some had sticks, others had spears.

Question.—For what purpose did the *habitans* want the arms from the Indians ?

Answer.—Does not know ; was not informed of it by them.

Question.—Whom do you allude to, when you say you were not informed by *them* ?

Answer.—To the people of our *Côte*, amongst whom was J. M. Thibert.

Question.—Look at the prisoners, and say which of them were with you at Chateaugay, or at Sault St. Louis, on the 4th of November instant ?

Answer.—Cardinal and Duquette went forward with them, to within a mile of Sault St. Louis. Saw L'Ecuyer, on the same day, at Chateaugay, with the band ; did not see him at the Sault. J.

Thibert accompanied them from Chateaugay to the Sault. J. M. Thibert left with them to go

to the Sault, but returned as soon as he had reached the wood. Did not see Ducharme at Chateauguay, nor at the Sault. Guimon<sup>d</sup> was both at Chateauguay and at the Sault. Did not see Thérien, neither at Chateauguay, nor at the Sault. Saw Côté with the band at Chateauguay, did not see him at the Sault. Lepailleur came with them as far as the Chapel of the Sault ; did not see him since. Did not see Lesiége, neither at Chateauguay, nor at the Sault.

Question.—Were any of those which you have stated to have seen, armed ?

Answer.—Cardinal had a cane in his hand. Duquette had a sword. L'Ecuyer had a gun, at Chateauguay. J. L. Thibert was unarmed. J. M. Thibert had a gun. Did not see Guimond armed, neither Dusault, nor Thérien. Lepailleur had a pistol. Côté was not armed.

Question.—Who were the leaders of the band which went from Chateauguay to Sault St. Louis ?

Answer.—Cardinal and Duquette commanded. Did not know whether they were called *Chiefs*, or not ; did not know any of the others to act as Chiefs.

Question.—Who commanded you to join the band that went to Dusault's, on Saturday the 3d ?

Answer.—It was J. M. Thibert.

Question.—Were you exercised or drilled, and by whom ?

Answer.—No ; as to him, (witness,) he was not, having been commanded on the evening of the 3d,

at a late hour, and taken on the following day by the Indians.

Question.—How were you occupied during the two hours you passed at Chateauguay?

Answer.—They were gathered in parties, and speaking together, waiting for daylight.

Question.—Were there any sentinels stationed at any place, and where?

Answer.—Knows there were sentinels placed; doesn't know who they were, as they were placed at some distance from him.

Question.—Did you see any person or persons who had been made prisoners at Chateauguay, and who were they?

Answer.—Did not see any.

Question.—In what order did the band march from Chateauguay to Sault St. Louis?

Answer.—They walked all together when the roads were good; when the roads were bad, they separated into parties, (*pelotons*), from twenty-five to thirty.

Question.—Did the Chiefs march with the *pelotons*?

Answer.—They did not.

Question.—Were the Chiefs before?

Answer.—They were sometimes before, sometimes behind.

Question.—What were the degrees of command amongst them?

Answer.—Did not know that there were any degrees of command; heard none mentioned.

Question.—Did you receive any orders during the time you were with the band; and what were these orders?

Answer.—No; there were no orders given; Cardinal and Duquette gave orders. They told them to assemble at the Church, and thence go on to Sault St. Louis.

Question.—Was there, or was there not in the band, any person called *Raquette*, *Castor*, or *Frère-Chasseur*?

Answer.—There was not.

Question.—Was there any other reason for the rising, than to take the arms from the Indians?

Answer.—No; never heard that it was for any other purpose.

Questioned by Cardinal.—Mr. Cardinal told them to march together, when the roads were good. When they were bad, they marched by *pelotons* from fifteen to twenty or twenty-five.

Question.—Are you not a witness for the Crown?

(Witness says he does not know what answer to make.)

Questioned by Lepailleur.—Have you not been arrested by the Indians at Sault St. Louis, at the same time that the prisoners were arrested?

(This question is rejected by the Court, as useless.)

PIERRE REED, (son of Joseph).—Resides at Chateauguay. On Saturday the 3d, at six o'clock in the evening, Newcombe came to his house, and

commanded him to go immediately to Duquette's. Witness consequently went there, and found seven or eight individuals. The party increased to the number of about forty, from the time of his arrival, until about eight o'clock. Grant then arrived, and was made a prisoner by Duquette. Did not know his name before he heard it pronounced. An hour or two after, the party increased to the number of one hundred, more or less. Henry Newcombe commanded them to go and disarm the Scotchmen, or borrow their arms. About one half of their band proceeded, for that purpose, towards the upper part of the river, and the rest went down. They first went to a Scotchman, who instantly gave up his gun. They then came back to the bridge, where, after they had remained for a short while, they were joined by the inferior division, who brought up M'Donald prisoner. Shortly after, it was decided that they must go to Sault St. Louis, and disarm the Indians. The expedition was commanded by Newcombe and Desmarais. Threats were made that if any would withdraw, he should be fired on. They consequently proceeded towards Sault St. Louis, and arrived on the morning of the 4th, at about seven o'clock, in the wood of Caughnawaga, where they remained two or three hours. After which, some one out of the band, (witness does not know who,) said they must scatter; and they did so. The Indians having been informed of their arrival, De Lorimier came to them, with five or six other in-

dividuals. De Lorimier spoke to Lepaillieur ; but witness does not know what they said one to another ; only heard De Lorimier say to Lepaillieur, that he must come to the village, to settle the business with them in one way or another ; they both set forth for that purpose. All the Canadians advanced, in the meantime, towards the village, and the Indians surrounded them. Some of them escaped, others were made prisoners. Witness returned to Chateauguay ; but was taken in the wood, with four or five others.

Questioned by the Judge Advocate.—Were the persons who went with you from Chateauguay to Sault St. Louis, armed ?

Answer.—The greater part were not armed ; some of them were armed with guns and spears, and others with staves.

Question.—For what purpose did the Canadians go to Sault St. Louis ?

Answer.—They went to disarm the Indians.

Question.—Do you know what the Canadians wanted with the arms of the Indians ?

Answer.—They understood that the Indians were coming against them, and they wanted to have their arms.

Question.—From whom did you understand that the Indians were coming against you ; and why were they coming ?

Answer.—From Desmarais and Newcombe, who said that the Indians were coming against the



Canadians, to massacre them, together with the Scotchmen.

Question.—Did you hear, or in any way understand, what was the object of the Chiefs in whose band you were?

Answer.—Witness did not.

Question.—In whose name was John Lewis Grant imprisoned?

Answer.—Does not know in whose name Grant was made prisoner; witness was near him, but he did not hear in whose name he was made prisoner.

Question.—Did you see any of the prisoners, either at Chateaugay or Sault St. Louis, on the 4th?

Answer.—Cardinal came with them to Sault St. Louis; but he left them in the wood; was not armed. Duquette left Chateaugay, to go with them to Sault St. Louis. He had a sword at Chateaugay; does not know whether he brought it with him, or not, to Sault St. Louis. L'Ecuyer set forth with them for the Sault, but left them in the wood; he had a gun. Saw J. L. Thibert at Chateaugay and at Sault St. Louis; was not armed. J. M. Thibert left for the Sault; does not know whether he was armed, or not. Did not see Ducharme at all. Joseph Guimond set forth for the Sault, unarmed. Does not recollect having seen Thérien, either at Chateaugay, or at Sault St. Louis. Côté left Chateaugay for the Sault, unarmed. Saw Lepailleur, first at Chateaugay,

and then at Sault St. Louis ; did not see any arms with him. Saw Lesiége no where.

Question.—Who were the leaders of the band along the road ?

Answer.—They received no orders from any one else than Newcombe and Desmarais. Knew of no other Chiefs than these two individuals.

Here the Court is adjourned till tomorrow morning, at ten o'clock.

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*Saturday, 1st December, 1838. (10 A.M.)*

The examination of Pierre Reed, (son of Joseph,) is continued:—

Questioned by the Judge Advocate.—In what order did the band march, from Chateauguay to Sault St. Louis ?

Answer.—Irregularly, and not like soldiers. Witness was behind, and received orders from Newcombe.

(Here the Court interpose, and declare as their opinion, that the witness does not tell the truth. Follows a remonstrance from one of the Judge Advocates, Mr. Mondelet, on the sanctity of an oath, and the liability of the witness, even according to human laws, to the severe punishment which awaits every perjurer.)

Question.—Were there in the band, persons of the name of *Raquette*, *Castor*, or *Frère-Chasseur* ?

Answer.—Witness heard these names mentioned ; but does not know by whom they were made use of, nor whom they were applied to.

Question.—Do you know whether the reason that induced the Canadians to take arms, was any thing else than to disarm the Indians ?

Answer.—Has always understood, and still understands, that the only object of the *habitans* was to disarm the Indians, and afterwards return peaceably to their homes.

Question.—Have you heard, or not, either at Chateauguay, or in going to Sault St. Louis, or elsewhere, that the *habitans* had risen in numbers, in some other places, and had taken possession of St. John's, *l'Isle aux Noix*, Beauharnois, &c.

Answer.—Did not hear that they had taken any place ; but understood they had risen.

Question.—Did you hear that, whilst in the band ?

Answer.—Heard it at Chateauguay, in the band, on the evening of Saturday the 3d.

Question.—Do you think the only object of the expedition was to disarm the Indians ?

Answer.—Understood so ; understood also that the object of the *habitans* was to disarm the Scotchmen in the other parishes.

(This question having been repeatedly proposed to the witness, Duquette respectfully observes to the Court, that only one question ought to be put on the same subject. Duquette grounds his observation upon the fact, that the first answer of the witness was not enregistered, because it was too favourable to the accused. Mr. President remarks, that it is proper to insist upon the

question, inasmuch as the witness might not have conceived it at once; and the objection is rejected.)

Questioned by the Court.—What was the object of the *habitans*, in making prisoners?

Answer.—Knows nothing about it.

Question.—Are you acquainted with the last witness, (Pierre Reed, son of Antoine,) and do you know if he was or was not in the band, on the 4th?

Answer.—Knows him. Has seen him with the band, before entering the wood of Sault St. Louis,

Question.—What was the general impression of the band, relative to their object?

Answer.—Knows nothing about it. Understood it was to disarm the Indians.

Question.—Have you received any orders from any of the prisoners?—Did you hear them, or any of them, give orders?

Answer.—Received no orders from any of the prisoners, except from Duquette, when he made Grant a prisoner. Heard none of them giving any orders whatsoever.

Questioned by Duquette.—Is it not true that the inn where you saw John Lewis Grant, on Saturday evening, the 3d November, was not kept by me?

Answer.—The meetings were held in a house occupied by Mrs. Duquette, as an inn; but Mr. Duquette himself resided there.

JACQUES TERONHIAHERE.—(The evidence is in-

terpreted.)—Resides at Sault St. Louis. Has been in Court during a few minutes ; but heard nothing. On the 4th of November last, rose early in the morning, and perceived five individuals, who came at a certain distance from one another, from Chateauguay to Caughnawaga. It was about seven o'clock. Being surprised to see them so early at Sault St. Louis, witness left his house to go to one Mr. M'Nabb's, to ask him if he knew what they wanted so early. His brother-in-law was there : requested him to saddle his horse, for the purpose of ascertaining if the report of *the woman*, (*see the evidence of Ignace Delille*,) was true or not. He went personally to see, and returned, confirming what *the woman* had said. He added, that a great number of armed men were coming in. Witness went, with three other individuals, in the direction of the assemblage, towards the Maypole. Saw on the steps of the Chapel, beyond the village, two individuals, one of whom witness recognized as the prisoner at the bar, Maurice Lepailleur. Went to Lepailleur and his companion with Ignace Delille, requesting the latter to inform himself of what they wanted. Ignace asked Lepailleur where he came from. He answered, he was coming from Montreal, and had passed by Laprairie. He added, that he was resting himself, being, as he said, fatigued. Lepailleur had a shot-bag with him ; they asked him what he wanted to do with it. He requested witness's companion not to interfere with that, as the bag did not belong

to him; whereupon Ignace requested him to tell the truth, and not to conceal from them what they wished to do. Lepaillieur then said to witness's companion: "You know what we are come to do; we have sent here five of our Chiefs: Cardinal, Duquette, Giasson, Bruyère and Meloche." These were the same individuals whom witness had seen early in the morning. Ignace replied to Lepaillieur, that the five Chiefs in question had come into the village; but that the Indians did not know what they wanted. Lepaillieur then said that the Canadians came to borrow the arms of the Indians, and asked Ignace what number did they amount to. Ignace answered he did not know, and that the Indians could not lend them their arms; that they, (meaning the Canadians,) must consult the Chiefs to that effect. The Indians then said that they must take away Lepaillieur's shot-bag. Witness consequently proceeded to do so, when Lepaillieur endeavoured to draw from under his coat a pistol, which got entangled in his sash. Witness advanced behind Lepaillieur, to take hold of it; thinks, had he not seized it, he would have shot him. The pistol was charged with ten buck-shot. Lepaillieur had on the very same coat that he wears today; his companion fled, and was not taken. He went forward, and gave information to the band, which was armed with guns, forks, staves and spears. When they came to Lepaillieur, somebody cried out to him: "if you are injured, only say the word." In the meantime, they had all their guns

pointed at the Indians. Lepaillieur answered that he was not hurt, and that they ought not to fear, as they, (the Canadians,) would settle the business like brothers, with the Indians. They then began to shake hands with the Indians, saying: "Be not afraid; we don't come to kill you." Lepaillieur asked them if they thought the Chiefs would deliver up their arms; after which, the Indians desired the band to come to the village, and Lepaillieur set forth with Ignace, to go and speak to the Chiefs. The band then said: "if we go to the village; you will perhaps make us prisoners?" Whereupon witness replied to Lepaillieur: "fear not; I shall settle the business." Witness's object was to make the whole band prisoners, which was impossible, had they remained where they stood. Thought the Canadians had come to make them prisoners; and as they could not do so, the Indians had resolved to make them prisoners. On entering the village, they surrounded them; whereupon the Canadians asked the Indians what they had said. The Indians, in surrounding the Canadians, told witness to remove, as they were going to fire upon them, if they, (the Canadians,) fired upon the Indians. The Indians did not wish to fire first. The Indian Chiefs gave orders to surround them, saying: "you are our prisoners." Thus, the Indians made them prisoners. Some of the Canadians asked if their arms would be given back to them; the Indians answered, *they would think of it*. When the Canadians came to ask the arms of

the Indians, they said to them: "We will fight for it; we shall have yours, or you shall have ours." The Chiefs ordered the prisoners to be taken to Lachine.

(Here Mr. President observes to the prisoners that the preliminary answers are entered as follows:—

"Was in Court during a few minutes; but heard nothing.")

The prisoners being called over, witness identifies the following:—

Saw Cardinal and Duquette at Sault St. Louis, on the 4th, unarmed. Did not see L'Écuyer, nor J. L. Thibert, nor J. M. Thibert, nor Ducharme, nor Guérin, nor Lesiége. Saw Guérin and Côté, with each a gun; witness spoke to both of them. Cannot say that he saw Guimond. Saw Lepailleur, with a pistol; he appeared to be the leader of the band. When witness asked the band who were the Chiefs, they answered, they were Lepailleur and the five others.

Questioned by the Court.—Did you know from any person of the band, what was their object in coming to Sault St. Louis, to disarm the Indians?

Answer.—Their object was to make the Indians prisoners in the Church.

(Here the Judge Advocate, Captain Muller, interposes, and repeats the question; to which witness answers as follows:—)

Heard from some of the band, that the Canadians wanted the arms of the Indians, to take La-



prairie and Montreal, on the same day. This was said after they were made prisoners. None of the Chiefs said so. Blanc Dusault was present when this was said.

Questioned by the Judge Advocate.—Heard from some of the band, that the Canadians had risen on that day, (the 4th,) in some other parts of the province; that they had taken *l'Isle aux Noix* and Beauharnois, not St. John's; and that, if the Canadians would lend them their arms, they would take Laprairie.

Question.—Why, and for what purpose, do you think that the Canadians wanted to take Laprairie, and afterwards make a descent upon Montreal?

Answer.—Cannot say any thing about it. The Indians who went with witness to the Chapel, are Ignace Delille, Joseph Kanatahéré, and a couple of others. De Lorimier came afterwards.

Questioned by the Prisoners.—Can you swear positively that Antoine Côté was armed with a gun?

Answer.—Yes.

Question.—Are you positive in saying that Lepailleux told you that there were five *Chiefs*, or five *persons*, in the village of Sault St. Louis?

Answer.—Lepailleux made use of the word *Chief*.

Question.—What word did you use, in speaking to him?

Answer.—Used the word *Kohanos*, which signifies, in Indian, *Chief*.

Questioned again by the Court.—Were the guns of the Canadians loaded?

Answer.—They were all loaded, and witness has still two of them in his possession, which are loaded. Witness does not count Lepailleux's pistol, which was also loaded. After they had taken the arms of the Canadians, they laughed, seeing how they were loaded; they unloaded them, and said, in jest, that they were still loaded enough to kill them.

NARCISSE BRUYERE.—Resides at Chateauguay; is a blacksmith. Knows all the prisoners. On the 3d of November last, saw Cardinal, Lepailleux and L'Ecuyer at Chateauguay bridge. Did not speak to them. Saw Duquette in the evening, at his own house. Also saw J. L. Thibert at the bridge. Saw J. M. Thibert going from the Church to the bridge. Saw Guérin on the 3d, at the *Côte St. Jean Baptiste*, in the parish of Chateauguay, between the hours of three and four in the evening. Also saw Edouard Thérien there. Saw Meloche at Sault St. Louis, and J. L. Thibert, as well as Cardinal, on the 4th. Also saw Duquette at Sault St. Louis, with several others. They were all together in the band, when witness saw them. The band was armed, and consisted of about one hundred men, more or less. Does not know who were the leaders. They took witness a prisoner, on Saturday night, at nine o'clock. Does not know under whose command the band marched; no Chiefs were made mention of. They told him they

were gone to disarm the Indians. They did not speak to him of any other plan, nor did they tell him what they wanted with the arms. Towards the 3d of November last, there existed at Chateauguay, a secret political society. Does not know what was the object of that society; thinks it was to defend themselves in case of a rebellion. Witness himself took an oath in the association in question. Newcombe and Duquette belonged to it, and witness was sworn by Desmarais, in Duquette's presence. None of the other prisoners formed part of it. The secret consisted of two signs: the first, to touch one's left nostril, and the other, to put the second finger of the left hand on the same finger of the right hand. The oath obliged the secret to be kept under penalty of death, and likewise to obey the orders of every commander. Did not know from the band, whether their object was the maintaining or the subverting of Her Majesty's Government. Heard nothing in the society, relative to any intention of proclaiming their independence; but afterwards, on arriving at Sault St. Louis, Cardinal told witness that the moment they would take possession of a place, the mark of independence would be put thereon, and the Americans would come in; that they would not come in before, because, if they were taken, they would be considered as murderers, and not as prisoners of war. Saw several persons armed in the band; cannot say that they were all armed.

Questioned by the Judge Advocate.—When you saw Guérin and Thérien at the *Côte St. Jean Baptiste*, had you any conversation with them on the subject of existing troubles?

Answer.—They told witness: “there shall be a great noise this night; Laprairie is to be taken.” They added, he had better go away, and asked him was he not aware of the troubles which were to take place on that night. Witness continued his way as far as *Ste. Marie*, in the parish of Chateauguay, where he again saw some agitation. He then proceeded to *St. Isidore*, out of the parish of Chateauguay, where he could not pass, having been forced to go back. Received a gun, (from Cardinal, he thinks,) on his way from Chateauguay to Sault St. Louis; is not certain whether he was present or not. All the people he met on the road, ordered him to go to Sault St. Louis. On his arrival at the bridge, Cardinal gave him a gun, ordering him to guard M'Donald and Grant, who were prisoners. Witness went forward himself with his gun.

Questioned by the Prisoners.—It is upwards of a month since witness has seen Lesiége. Did not see Ducharme at Chateauguay. When Cardinal gave him a gun, it was to guard Messrs. Grant and M'Donald, who were detained prisoners in the house of one Mrs. Boudria. Received no other orders from him, than to stand sentry.

(Here the evidence for the prosecution is closed, and the Prisoners are called upon for their

defence. The following motion is presented on their behalf:—)

PROVINCE	}	THE QUEEN,
OF		vs.
LOWER CANADA.		JOSEPH N. CARDINAL & AL.

“The Prisoners, (without waver of any objection or exception by them heretofore made,) respectfully move that delay may be granted to them until Tuesday, the 4th day of December instant, to arrange and prepare their defence, and to procure the attendance of witnesses in support of the same.

And in furtherance of this, their humble request, the Prisoners beg leave to urge on the attention of the Court, the extreme shortness of the time allowed to them to prepare for trial, which has been, in their instance, limited to two days; for it was not until a late hour on the 25th November last, (the Sabbath day,) that they had an opportunity of conferring with Counsel; the unusual restraint imposed upon them during that brief interval, by having been forbidden all communication with their relations and personal friends, although imploringly sought for; the difficulty of obtaining the attendance of their witnesses, who, almost without exception, reside on the southern shore of the St. Lawrence, at a distance of upwards of twenty leagues from the city, at a season when communication with those parts is next to impracticable, and in times when the utmost consternation prevails among the *habitans* of that section

of the country ; the practice of Courts Martial, as laid down in "Simmon's Remarks on the Constitution and Practice of Courts Martial," p. 192, (2d edition,)—in pursuance whereof, every prisoner, (though within reach of his witnesses,) is entitled to "a day or two, or more, subsequent to the closing of the prorecreation," to arrange and prepare his defence.

Other considerations might be dwelt upon by the Prisoners ; but they consider it a work of supererogation to add any further reasons in support of a motion, upon the accordance or refusal of which their fate may depend. A Court sitting to render justice, and composed of members honourable in mind and humane in heart, must readily grant a request of such obvious and imperative justice."

After a few minutes deliberation, the delay asked for is granted, and the Court is adjourned till Tuesday morning, at ten o'clock.

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*Tuesday, 4th December, 1838. (10 A.M.)*

After calling over the Members, the Prisoners are called upon their defence, and submit to the Court the following Protest. The Judge Advocate who reads it, is interrupted by some of the Members, when arrived at the word "*incompetent*." The deed is stigmatized with the epithet of "insulting in its terms." Mr. President observes that the Court hold their mandate from superior authorities, and consequently have a right of juris-

diction over the Prisoners ; after which the Protest is rejected, without any other form. It shall find a place here :—

PROVINCE OF LOWER CANADA.	}	THE QUEEN, <i>vs.</i> JOSEPH N. CARDINAL & AL.
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“ The Prisoners humbly, but solemnly, protest against the present tribunal, now assembled under the designation of a Court Martial, proceeding further in the said cause, or compelling the said Prisoners, or any of them, to enter upon his or their defence :

Firstly, Because the said tribunal is wholly incompetent to take cognizance of the offence of High Treason, with which the Prisoners stand charged, or to sit in judgement upon them for the said offence, inasmuch as they say :—

That by the Act of the Imperial Parliament of the 14th Geo. III. c. 83, it is enacted that the criminal Law of England shall continue to be administered, and shall be observed as law in the province of Quebec, as well in the description and quality of the offence, as the method of prosecution and trial, to the exclusion of every other rule of Criminal Law, or mode of proceeding therein.

That the Statute of the Imperial Parliament of the 25th Edward III. cap. 2, commonly called the Statute of Treasons ; the Statute of the same Parliament of the 7th William III. c. 3 ; and the Statute of the same Parliament of the 7th Anne, c. 21, and divers other Legislative Expositions of the

said Statute of Edward III., by different Laws enacted since that period, formed, and still form, part of the Criminal Law of England, introduced into the said Province of Quebec, by virtue of the said Act of the Imperial Parliament of the 14th Geo. III. c. 83, and are yet in force in the Province of Lower Canada, by virtue of the said Act.

That by virtue of the Common and Statute Law of England, having reference to criminal offences, and forming part of the laws of this province, a party charged with High Treason is entitled to be tried by a jury of his country, impannelled before the ordinary tribunals, to the exclusion of every other mode of trial; to be furnished, at least ten days before the day of trial, with a list of the jury, to give him the benefit of the challenge; with a list of the witnesses for the prosecution, to enable him to detect conspiracy and to prevent perjury; in like manner, to have at least ten days previous to such trial, to procure the assistance of counsel.

That by the Act of the Imperial Parliament of the 1st Victoria, cap. 9, under the supposed authority of which an Act, (as it is said,) hath been passed by the Administrator of the Government, by and with the consent of a pretended Special Council, authorizing the trial by Courts Martial of all persons, who, since the first day of the month of November now last past, had been or then were engaged in the rebellion therein referred to, it is expressly provided: "that it shall not be lawful  
"for the Governor and Council, to repeal, sus-



“pend or alter any provision of any Act of the Imperial Parliament of Great Britain, or of the Parliament of the United Kingdom, or of any Act of the Legislature of Lower Canada, as then constituted, repealing or altering any such Act of the Imperial Parliament.”

That it was not, and is not competent to any local Legislature, created by the said Act of the Imperial Parliament of the 1st Victoria, c. 9, to sanction any departure from the practice of administering the Criminal Law of England, as introduced into this province by the said Act of the Imperial Parliament of the 14th Geo. III. cap. 83, or to abrogate any part of the Common or Statute Law of England, having reference to the offences of High Treason, existing and in force at the time of the passing of the last mentioned Act.

That the pretended Ordinance of the Administrator of the Government and Special Council of the 2d Victoria, cap. 3, is null and illegal; not only for the reasons aforesaid, but also because the Council firstly constituted under the Act of the Imperial Parliament of the 1st Victoria, cap. 9, was lawfully dissolved by letters patent of His Excellency the Earl of Durham, the then Governor-General of the province, on or about the first day of June last; and that the said Ordinance of the 2d Victoria, cap. 2, was enacted with the sanction and advice of the persons composing the Special Council, so dissolved as aforesaid, without the said Special Council having been reconstructed;

and also, inasmuch as there was no Legislature in session in the province, on the day when the said pretended Ordinance purports to have been passed; the said pretended Ordinance of the 2d Victoria, cap. 3, purporting to have been enacted on the eighth day of November last past, whereas the pretended Special Council, by and with whose sanction the said pretended Ordinance was enacted, was convened by proclamation to meet only on the ninth day of the said month of November now last past.

That, supposing the said pretended Ordinance of the 1st Vic. cap. 3, had been legally enacted, (which the Prisoners, on the grounds above set forth, distinctly deny;) yet, inasmuch as the said pretended Ordinance merely assumes the power of authorizing the Administrator of the Province, from and after the said eighth day of November last, to arrest and detain in custody all such persons as heretofore had been, or then were, engaged in the rebellion therein mentioned, and because such persons so arrested and detained in custody, to be brought to trial, in a summary manner, by Courts Martial; and as they, the prisoners, were not arrested after, nor on the said eighth day of November last, but had, in fact, been arrested several days previous to the said eighth day of November last, the said pretended Ordinance could not in any wise be construed in such manner as to render them amenable to a Court Martial, or to

any other Court established under colour of the said pretended Ordinance, Victoria 1st, c. 3.

That they, the Prisoners, having been arrested previous to, and being in the custody of the Civil Authorities, at the time when Martial Law was proclaimed by the aforesaid Administrator of the Government of this Province, on the fourth day of November last, cannot come within the scope of the said pretended Ordinance, 2d Victoria, cap. 3, which is declared to be founded upon the said proclamation of Martial Law, inasmuch as no law or proclamation can have, or be made to produce, a retro-active effect.

1stly, Because no Court Martial, even though assembled to try persons amenable to a tribunal of that nature, can subject any individual to the punishment of death for any crime not expressed to be furnished by the Mutiny Act, or by the Articles of War; whereas the crime of High Treason, now imputed to the Prisoners, which is punishable by death and attainder, according to the laws of the land, is not specified or referred to, in the said Mutiny Act, or in the Articles of War.

2dly, Because the proceedings before the said tribunal, designated as a Court Martial, have not, in their instance, been carried on in the manner required by the law of the land, and the practice of Courts Martial, in all cases over which such Courts have competent jurisdiction.

3dly, Because evidence of a nature favourable

to the Prisoners, although given by the witnesses, was not recorded, and questions tending to elicit other evidence favourable to the Prisoners, were rejected.

It cannot be contended that the Prisoners have been foreclosed from thus protesting, inasmuch as the incompetency of a tribunal before which a Prisoner is tried, may be urged at any stage of the proceedings.\* And inasmuch, moreover, as the objections lately set forth, are founded upon the illegality of the proceedings had before the said tribunal, as well previous to, as since the opening of the trial."

(Signed,)

J. N. CARDINAL, &c.

Montreal, 4th December, 1838.

The above Protest being rejected, the Prisoners beg leave respectfully to submit to the Court the following Motion :—

PROVINCE	}	THE QUEEN
OF		vs.
LOWER-CANADA.		JOSEPH N. CARDINAL & AL.

"Whereas the evidence on the part of our said Lady the Queen hath been duly closed in the said cause; and whereas no legal evidence hath been adduced to establish the charges laid against Louis Lesiége, otherwise called Louis Lesage dit Laviolette; and whereas the testimony of the said Louis

\* It will be remarked that the prisoners had already attacked the jurisdiction of the Court, by the Preliminary Exceptions which they submitted, before pleading to the charge.

**Lesiége**, otherwise called **Louis Lesage dit Laviolette**, is material and necessary to the defence of the eleven other prisoners now under accusation ; they, the said remaining eleven prisoners, namely : **Joseph Narcisse Cardinal**, **Joseph Duquette**, **Joseph L'Ecuyer**, **Jean Louis Thibert**, **Jean Marie Thibert**, **Léon Ducharme**, otherwise called **Léandre Ducharme**, **Joseph Guimond**, **Louis Guérin dit Dusault**, otherwise called **Blanc Dusault**, **Edouard Thérien**, **Antoine Côté**, and **François Maurice Lepailleur**, having by law a right to avail themselves of such testimony, and to demand that the said **Louis Lesiége**, otherwise called **Louis Lesage dit Laviolette**, be discharged forthwith, for the purpose of giving such testimony, (without recognizing the jurisdiction of the said Court over them, or any of them, and without waver of any objection by them heretofore urged or pleaded,) humbly move that the Court do take the case of the said **Louis Lesiége**, otherwise called **Louis Lesage dit Laviolette**, into consideration, *instantly*, and therefrom discharge the said **Louis Lesiége**, otherwise called **Louis Lesage dit Laviolette**, from the accusation of High Treason, now pending against him as aforesaid, in order that he may be, in due course of law, examined as a witness in their behalf.

And the said **Louis Lesiége**, otherwise called **Louis Lesage dit Laviolette**, as well in his own behalf, as in furtherance of the above application thus preferred on the part of his fellow-prisoners, prays

that his case may be taken into consideration, *instantly*, and that he be forthwith discharged from the said accusation.

The Prisoners found their application upon the practice universally followed in all Courts of Law, binding alike on all Courts Martial in their proceedings, when not otherwise regulated by the Statute, and would humbly refer the Court to all writers on the Rules of Evidence in criminal cases, and more especially to a case in point, namely, *Stafford's Case*, H. T. 1801, (K. B.) *east.* 306, which is referred to in *Bacon's Abridgment*, under the word: "*Martial Law and Courts Martial*, No. 580," in the following terms: "The Mutineers of the Bounty were tried by a Court Martial, at Portsmouth. There being no evidence against one of the persons accused, it was insisted, on the part of another of them, that he had a right to examine the first on his behalf. The Court, however, by the advice of the Judge Advocate, refused to let him be examined, saying, the practice of the Courts Martial had always been against it; and the prisoner was condemned to death; but, upon the sentence being reported to the King, execution was respited till the opinion of the judges was taken, who all reported against the legality of the sentence, on the ground of the rejection of legal evidence; and the party was afterwards discharged."

Montreal, 4th December, 1838.

The Court having heard the above Motion, refer to their Legal Advisers. Mr. Day, having taken communication of the case alluded to, according to the author himself, declares it not directly in point, and consequently inapplicable to the present case. His observation is grounded upon the fact, that in the trial of Stafford, above quoted, there was no evidence against the accused whose discharge had been solicited; whilst, in this instance, the prisoner Lesiége is somewhat implicated. And the Motion being overruled, the Prisoners proceed to the examination of the witnesses for the defence:—

(A. P. Hart, Esquire, joins Messrs. Moreau and Drummond, for the defence of the accused.)

JEAN LOISELLE, of Chateauguay, farmer.—

Questioned by J. M. Thibert.—Knows M. Thibert, since his childhood.

Question.—Did you see me on the 4th of December, and where?

Answer.—Yes; in a field near Chateauguay, at about half-past two o'clock in the afternoon. Witness was with him; they were running away together.

Question.—Why did we run?

Answer.—We endeavoured to conceal ourselves.

Question.—Why did J. M. Thibert endeavour to conceal himself?

Answer.—He did not tell it to witness.

Question.—In what direction was Thibert running? Was it not in the direction of his own home?

Answer.—It was.

Question.—Do you not know that he ran away to avoid all intercourse with those who had risen?

Answer.—Believes it was for that purpose; he ran away because he was afraid.

Question.—With whom were you, when you met J. M. Thibert?

Answer.—Was with one of my brothers, Joseph Loiselle, and one Paul Alleine.

Question.—Are you acquainted with one Bastien Villamme?

Answer.—Yes.

Question.—State if you met him on the 4th, and if Thibert was then present?

Answer.—Was with his brother, with J. M. Thibert and with Alleine, when they met Villamme; he came on horseback.

Question.—Had not Bastien a gun, and did he not command Thibert to go to the camp?

Answer.—Yes; Bastien got down from his horse, and cocked his gun at Thibert, commanding him to go to the camp.

Question.—Are you not under the impression that Thibert went to the camp, merely because he was forced to do so?

(This question is rejected by the Court, it being a matter of opinion. It is thus changed:—)

Did not Thibert follow Bastien, after these menaces?



**Answer.**—Yes; Bastien conducted Thibert before him as far as the camp, threatening him, and saying he would bring him by force, if he refused to march.

**Question.**—Was Thibert armed?

**Answer.**—No; he had nothing in his hand.

**Question.**—Is not Thibert a peaceable, quiet man, and the father of a family, enjoying a good reputation?

**Answer.**—Yes; never heard any thing against him.

**Questioned by Lepailleur.**—Do you know Frs. Maurice Lepailleur, and since what time?

**Answer.**—Has known him for eight years.

**Question.**—Is he a peaceable man, enjoying a good character, and the father of a family?

**Answer.**—Yes.

— By Duquette.—Knows Duquette for three or four years. He enjoys a good character.

— By J. L. Thibert.—Knows J. L. Thibert since his birth. He is a good character, and the father of a family.

— By Guimond.—Has known Guimond fifteen years past; he enjoys a good character, and is the father of a family.

— By L'Ecuyer.—Does not know L'Ecuyer enough to speak of him, either favourably or unfavourably.

— By Lesiége.—Knows Lesiége five or six years. He enjoys a good character; does not know if he is the father of a family.

— By Côté.—Has known Côté for the last ten years; he enjoys a good character, and is the father of a family.

— By Thérien.—Knows Thérien since three years, but very little. Never heard any thing against him; believes he is the father of a family.

Questioned by the Judge Advocate.—How many persons were taken to the camp by Bastien, when you saw him with Thibert at Chateauguay?

Answer.—Six, Thibert included.

Question.—Where was the camp?

Answer.—At Mr. Duquette's, near the Church at Chateauguay.

Question.—At what distance were you from the house of Thibert, when you ran away with him and the others?

Answer.—We were in the fields of Chateauguay, at the distance of a league or a league and a half from J. M. Thibert's house.

Question.—From what direction came Thibert, in his flight?

Answer.—He came from the Church of Chateauguay.

Question.—How do you know that?

Answer.—Because witness ran away with him from the Church.

Question.—What distance is it from the Church, to Thibert's?

Answer.—It is about one league and a half, or one league and three quarters.

JOSEPH LOISELLE.—Witness confirms the good

character given by his predecessor to the above named prisoners. Has known Cardinal for fifteen years; he bears a good character, and is the father of a family. Knows Ducharme three or four years; he enjoys a good character. Doesn't know if he is the father of a family. Knows Guérin for four or five years; he bears a good character, and is the father of a family. Has known Thérien for twenty years; he bears a good character, and is the father of a family.

Questioned by J. M. Thibert.—Have you seen J. M. Thibert on the 4th of November last, at what hour, and where?

Answer.—Saw J. M. Thibert, on the 4th of November, between the hours of two and three in the afternoon, near the mill of Chateauguay. He was running away, with four other individuals, at the distance of about fifteen acres from the village. He was not armed. There were then five persons together: witness, his brother, one Paul Alleine, and two other individuals. Thibert fled in the direction of his home. He met, in his flight, a man on horseback; does not know if he spoke to him, or not. The individual on horseback had a gun, and commanded Thibert to go to the camp. He cocked his gun at him and threatened to shoot him. Does not know whether his intention was, or was not, to shoot him. Thibert went to the camp, after these menaces. John M'Donald, (*the second witness for the Crown*), asked witness: "why do you come and give your evidence?"

Answered: "in obedience to the summons of the Court." M'Donald said nothing else.

PAUL ALLEINE, also confirms the good character of the prisoners in general. Knows L'Ecuyer these nine years; he bears a good character, and is the father of a family.

(This witness having been brought up to prove the same facts as the preceding witnesses, the Court observes that he is not necessary, and, in consequence, he is not examined.)

PIERRE JACQUES BEAUDRY.—Witness is not gaoler of the new prison of Montreal. Keeps the books and other documents of the gaol. His duty is also to examine the provisions and other articles, which come in and out of the gaol, every day, from twelve to two o'clock.

Question.—On what day has Léandre Ducharme been lodged in the prison of this town?

Answer.—On the 7th of November last. He absented himself since that day, during two nights, (witness cannot tell which,) to go, witness does not know where. He left the gaol under the charge of the Provost-Marshal, and came back under the very same charge.

JOHN WILSON, Provost-Marshal.—Ducharme slept with his fellow-prisoners, during the nights of the 28th and 29th November, at *Pointe-à-Cal-lière*.

LAURENT LATOUR, of Lachine, farmer.—Saw Ducharme at Lachine, on Saturday, 3d November, at about six or seven o'clock, A.M. Witness

spent the evening with him, at his, (Ducharme's,) cousin's. Saw him also at the door of the Lachine Church, on the following day, the 4th, at about seven or eight o'clock in the morning. Ducharme's father resides at Chateauguay, and his son often goes to see him there.

Questioned by the Judge Advocate.—Lachine is three leagues distant from Chateauguay. The journey can be made in two or three hours by the common way, and in two hours by the steamboat. The steamboat does not cross on Sunday.

MICHEL ROY PORTELANCE, of Lachine, farmer. —Saw Ducharme at Lachine, on the 4th, between eleven and twelve o'clock. The steamboat does not cross on Sunday. Ducharme's father resides at Chateauguay, and his son often goes to see him there. On the night of Saturday the 3d, the weather was very bad; the wind blew, and it rained very hard. It would have been very dangerous to cross over in such weather, from Lachine to Chateauguay.

ELIZABETH ST. DENIS.—Is the widow of Jean Baptiste Boudria, and resides at Chateauguay. Knows all the prisoners for several years. Did not see Léandre Ducharme at Chateauguay, on the 4th. Was at her own house on that day. About four o'clock in the afternoon, a person came and asked for Mr. M'Donald, who was detained prisoner in her house. Does not know who it was. Ducharme certainly is not the person who came and asked for Mr. M'Donald; he was not

amongst those who came and asked for him. Saw Cardinal at her own house, when Grant and M'Donald were detained prisoners there ; had no conversation with him. When witness saw Grant on the Saturday night, (3d November,) he appeared to be intoxicated. When she spoke to Mr. Cardinal, he seemed afraid of what was passing. He was not armed, nor did he give any orders, when she saw him.

Question.—Is it not true that one Meloche came on the morning of the 4th to Cardinal's office, and speaking to him and to several others, commanded them to march, and told them that, if they refused to do so, he would force them, (meaning Cardinal and others?)

(This question being submitted to the Court, Mr. President observes that it is too leading, and must be put in another shape. It is thus changed:—)

Is it not true that one Meloche came, on the morning of the 4th, at Cardinal's office, and if so, state what he said?

Answer.—When Meloche came in, there were several persons at my house. On arriving there, he said that every body must go, and asked for Boudria. Cardinal asked what it was; Meloche answered he knew nothing about it. Cardinal then absented himself, and afterwards came back, in a few minutes. Neither Guérin, nor L'Ecuyer, came to witness's house on the evening of the 3d or 4th, with arms. Saw Lepailleur at her house.

on the 4th, unarmed. She had no conversation either with Mr. M'Donald, or with Mr. Grant. Did not see Côté at Cardinal's, on the 4th, armed with a sword. Guimond did not come to her house on the 4th, armed, during the time Messrs. Grant and M'Donald were detained prisoners there.

Question.—Had the above-named prisoners been armed, would you not have seen them?

(This question is rejected by the Court.)

It being Four o'clock, the Court is adjourned till tomorrow morning, at Ten o'clock.

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*Wednesday, 5th December, 1839, (10 A. M.)*

The examination of Widow Boudria is continued:—

Questioned by the Judge Advocate.—Saw Grant intoxicated, on Sunday morning. He came to her house on that day, at about three or four in the morning, and left at the same hour in the evening. He drank strong liquors. Saw Mr. Cardinal but once in his (C.'s) office. Saw Ducharme at no time on the 4th, at Chateauguay. Saw him the following morning, alone and unarmed. On her arrival at her house on Monday, found Grant tipsy. Had spent the whole night by a sick woman. Does not keep an Inn. Mr. Cardinal's office is in her house. It was let by Messrs. Cardinal and Desmarais. No other person either lodged or boarded with her.

VITAL DUMOUCHELLE, of Chateauguay, far-

mer.—Saw Lepailleur on the morning of the 4th, between four and half-past four, at Mrs. Boudria's; he was not armed. Also saw Cardinal there, at the same hour. Cardinal did not give any orders, nor was he armed.

Questioned by the Judge Advocate.—Did you belong to the Band who made M'Donald a prisoner?

Answer.—No.

(Here Mr. Duquette respectfully submits to the Court, that such questions only are to be put to the witness, as immediately derive from the examination in chief. Mr. President observes that the principle invoked by Mr. Duquette is well founded, but that its application is a wrong one, inasmuch as the questions put by the Judge Advocate, spring from the examination in chief. He remarks moreover, that the Court is subject to no rule, not even to that which obliges the prosecutor to put only such questions, as spring from the examination in chief. The examination is thus continued :—)

Witness went to Mrs. Boudria's at about four or half-past four, in the morning, because he was sent for to guard the prisoners. On his arrival there, was put as a sentry. A young man, whom witness does not know, came and fetched him for that purpose. It did not appear to him extraordinary, to see Lepailleur so early at Mrs. Boudria's. Did nothing at all at Mrs. Boudria's. The guard consisted of ten individuals. Does not



know who commanded them; nor does he know who placed the sentries. Was not armed, when he mounted guard. Does not know what was the object or intention of that assemblage of armed men, at Mrs. Boudria's. Thinks now that they wanted to rebel. Was dressed on the 4th as he actually is, with the exception that he had not the same boots.

(Here the Superintendant of Police is brought up, and the witness confined to jail, immediately after having given his evidence. He had been previously warned, as well as several other witnesses, against relating any fact whereby he might criminate himself.)

ALEXIS MESNARD.—Came to Montreal, on Saturday the 3d, and left the town at four o'clock, for Lachine. On the following morning, crossed at Sault St. Louis, with Mr. Laflamme's servant. They crossed four or five together to Chateauguay.

(Here the prisoners being informed that the evidence of this witness is irrelevant, his examination is discontinued.)

The Rev. M. J. BTE. LABELLE, of Chateauguay, *Curé*.—(The Court being informed that this witness is brought up, merely to prove the character of the accused, declares itself satisfied on that point. The prisoners insist upon the respectability of the witness, who, on that ground alone, is examined.) Knows Cardinal. Would have hitherto thought him a peaceable man; is

the father of a family. Knows Duquette ; has always thought him to be a peaceable young man. Knows L'Ecuyer ; is a good farmer, and the father of a family. Knows J. L. Thibert ; a proof that they have always placed in him an implicit confidence, is, that they made him a churchwarden ; he is the father of a family. Knows J. M. Thibert ; knows nothing bad against him ; is the father of a family. Does not know Ducharme. Knows Guimond, and has always known him for a peaceable man ; still believes him to be such ; he is the father of a family. Knows Guérin, but very little ; is the father of a family. Thérien has always behaved himself well in the parish ; is the father of a family. Has always considered Côté as a peaceable man ; is the father of a family. Never thought Lepailleur a man to meddle with Rebellion, previous to his incarceration ; is the father of a family. Has always been inclined to think Lesiége a peaceable man.

Questioned by the Court.—Does the evidence you have just given of the reputation of the prisoners, relate to their conduct in general ; or does it relate to their conduct, since one year or two ?

Answer.—It relates to their general conduct, for six years that I am in the parish.

PIERRE ROCHON, of the Parish of Chateauguay, Farmer.—J. M. Thibert came to my house on the 5th, a little before daylight, to conceal himself at the end of the wood of *Ste. Marguerite*. He, in fact, hid himself in different parts of the

wood, from Monday the 5th, till next Saturday, the 10th, because he was afraid, and unwilling to meddle with any disturbance whatsoever.

JOSEPH COUILLARD, of Chateauguay, Merchant.—Is a Commissioner, a Magistrate, and a Captain of Militia, at Chateauguay. Witness met J. L. Thibert on the 3d of November, on the middle of his farm at Chateauguay. He came to him in tears, saying: "My dear Sir, the people are to be risen to night." He added: "the *authorities* have arrived;" without saying from whom he knew it. Witness went to Chateauguay, to see what were those *authorities*. Thibert did not go with him. Witness told Thibert he would go and try to prevent it; Thibert offered to go with him, but was prevented from so doing. On his arrival in the village, saw about 20 persons, but no authorities. Henry Newcombe is the one who commanded Thibert, and prevented him from going with witness. Newcombe himself told so to witness, in his barn, after he had seen Thibert. Thibert was weeping, when he came to witness. None of those whom witness saw at Chateauguay, on the 3d, was armed. Yesterday, or the day before yesterday, as witness was coming up the stairs of the Court House with Pierre Mallette, Jean Loiselle, Joseph Loiselle and Pierre Rochon, Mr. M'Donald came to them and asked them: "Where are you going?" He was speaking as well to the others as to himself. The *habitans* answered they had come to give their evi-

dence, in obedience to the summons of the Court. He then said: "If you don't retire, I shall put you in jail."

Questioned by the Judge Advocate.—Does not recollect whether M'Donald said: "I shall put you," or "you shall be put in jail." All that witness can say, is that he threatened them with prison. He also gave them to understand that their evidence was very likely to criminate themselves.

(Here the prisoners submit to the Court, that the witness is only to answer the questions put to him, without any addition whatsoever on his part. The application is rejected.)

Question.—Have you, as a Magistrate, adopted any measures to prevent those infractions of the peace?

(The prisoners object to this question, on the ground that it is irrelevant; the objection is overruled.)

Answer.—On Saturday night, (3d November,) went to Chateauguay, to see if there were any authorities there. Asked a man what there was. Was told by him, he did not know more than himself; merely took informations on the subject. Witness then returned to his house. Was so sick, that he could scarcely speak. Was informed on Sunday, that M'Donald and a few others had been made prisoners; but was so sick, that he could not take any measures to that effect. On the following Friday, saw at Chateauguay, a knot of men, whom he advised to return quietly to their

homes. On Saturday night, (3d November,) it was too dark at Chateauguay, to allow witness to distinguish if the assemblage in question was armed, or not. Two of them spoke to him: Cardinal and Duquette. J. L. Thibert told him that the people would be risen to disarm the Scotchmen. Cardinal told him: "So, we are again in troubles?" Witness asked him what he meant; to which he replied, he knew nothing more than himself. Duquette seeing witness suffering, told him: "Why don't you return, Mr. Couillard?" Witness issued no *warrants* against any of them; could not issue any *warrant* against about twenty persons, who were doing no harm.

(The evidence on behalf of the prisoners is here closed, and Mr. President observes that the Court is desirous of examining Mr. M'Donald a second time. The prisoners object to it, on the ground that he was present in Court, during the examination of the evidence on the Defence. The Court is cleared, to deliberate on the merits of the objection. After a few minutes, the Court is open, and decides that Mr. M'Donald is to be heard on a particular point.)

Questioned by the Court.—Were you in Court during the examination of the witnesses on the Defence?

Answer.—Entered at different times inside of the Court; but did not remain more than a second at a time.

Question.—You said in your examination in

chief, on the 29th of November last, that on Saturday, the 10th, Ducharme came in and told that the Americans had taken possession of Napierville, and that you must go there; and you said, moreover, that you recognized amongst the escort of armed men, Ducharme, who appeared to be the principal leader: declare to the Court, whether the Ducharme you then saw, was or was not Ducharme, the prisoner before the Court?

Answer.—Cannot swear positively that Ducharme was at Chateauguay on the 10th; was so confused and excited.

The witnesses being heard on both sides, the prisoners submit to the Court, a motion, demanding delay until tomorrow afternoon, at two o'clock, to prepare their Address. The Court, owing to the three festival days, (Friday, Saturday and Sunday,) immediately successive, reduces the delay to eleven o'clock; after which, the Court is adjourned.

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*Thursday, 6th December, 1838. (11 A. M.)*

Mr. Drummond is allowed to address the Court, as follows, and Mr. Hart joins him in reading the Comments which form part of the Address:—

*Gentlemen of the Court,*

“Arraigned before a Tribunal, hitherto unknown to all without the precincts of a barracks or the limits of a camp; so formidable in appearance, so vague in its character, so unsettled in its proceedings, and called upon to answer for life and liberty,

or death and opprobrium to our posterity, we dared to demand the right of every British subject: *a trial by his peers*; we dared solemnly, but respectfully, to protest against being compelled to enter into our defence, before a Tribunal whose right to try us, as civil subjects of the Crown of England, we could not recognize; and in so doing, we acted in accordance with a principle maintained in every Court of Justice in the known world, not solely in matters where the lives, but even where the most unimportant rights of individuals are at stake, namely: that the jurisdiction of such Court may be questioned by the person cited before it, and the decision of the Tribunal required, as to the absence or existence of the jurisdiction so shadowed with doubt. This declaration was deemed an insult! Gentlemen of the Court, *we meant it not as such*. Men placed in the awful situation in which we stand, have no disposition to insult even the meanest of their fellow-creatures; much less to proffer outrage to a formidable Tribunal, arrayed in judgment against them, and prepared to decide upon their fate. With regard to you, Gentlemen, we impute it not to blame, if we have been arraigned under these forms. We are aware that the power you now wield, has not been claimed by you; that you have not arrogated to yourselves the right to judge us: but we dared to assert our immunities as British subjects, to affirm that the authority from which you hold your mandate, had overstepped the limits prescribed to it by a

Superior Power, which, with an eye ever watchful over the liberties and privileges of all who owe it allegiance, had forbade even the slightest interference with the forms hitherto adopted in this country, in the trial of supposed criminals. And therefore, we called upon you to pause, ere you proceeded to enregister a judgment against any one of us, not for ourselves alone, nor in the names of our wives and children, who, under presumption of our guilt, have been banished from their homes, by the brand of the incendiary, to seek the roof of charity, in the name of that God who protects the shelterless; not only on behalf of the hundreds who, lingering like ourselves in the dark dungeons whence we have been dragged hither in chains, awaited with anxious ear and beating heart, a decision to them of such vital importance, but also in the names of half a million of our fellow-countrymen, any one of whom may, at a moment's warning, on a bare shadow of evidence, be cited before you in judgment, to be surrounded in that dread hour, by all that can appal, deprived of all that can support the human heart in such a situation, and utterly stript of that armour with which the humanity of English Law, as extended to this Province, had hitherto encircled the accused. But the *fiat* has gone forth! You have decided, (or rather you have assumed,) that you are duly empowered to judge us. As we must, therefore, for the present, submit to the decision of a Military Tribunal, we deem ourselves fortu-



nate in beholding, in the persons of our Judges, many whose high reputation sufficiently warrants us that they will not stain their laurels with aught savouring of injustice, and others who, bearing on their countenances the impress of high aspirings, will not cloud their rising fame, by allowing any preconceived opinions which the breath of malice may have wafted to their ears, to influence the decision which they have solemnly pledged themselves before Heaven, to render *according to the evidence*. No, Gentlemen of the Court, in your consideration of the case now before you, you will discard from your memory all recollection of recent events; you will show to the world, that your minds are above being tainted with prejudice; you will set at defiance the bloodthirsty cravings of that portion of public opinion, *which, alone, is not at this moment mute*, and which so peremptorily demands *not punishment to the guilty, but death to all the accused*; and you will be governed in your deliberations by the following propositions, upon which, before commenting separately upon the evidence adduced, as well against, as in favour of each of us, we beg to rest our defence:

Firstly, The rules and doctrine of evidence, as admitted by law in all criminal cases, or on pleas of the Crown, are adhered to in the same manner upon trials of Courts Martial, the only exceptions being where the proceedings have been otherwise regulated by the Statute.

Secondly, That cases of High Treason, being

in no wise contemplated by the Statute, either as to the mode of trial, or the meed of punishment, must be regulated by the aforesaid rules and doctrine of evidence before Courts Martial, (if such Courts can ever be competent to take cognizance of offences of that nature.)

Thirdly, That two lawful and, (to use the language of the old authors,) *proveable* witnesses are required, to convict a prisoner in all such cases of High Treason.

Fourthly, That there exists no crime where the will counteracts the deed; or in other words, that threats and menaces, *duress per minas*, which induce fear of death or of bodily harm, take away for that reason the guilt of apparent crime, at least before the human tribunal.—*See Blackstone, vol. 4, p. 29, Edition of 1795.*

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*Comments of Léandre Ducharme.*

It has been stated by John Lewis Grant, the first witness on the part of the Prosecution, that he saw me in arms at Chateauguay, on his arrival there, at an early hour, in the evening of the 3d of November last. It is not astonishing, (however to be regretted,) that a man who was, on that occasion, (as it was proved by Mrs. Boudria,) in a state of intoxication, should make a statement so false, so positively disproved by two unimpeachable witnesses, with whom I spent that night and a part of the following day, up to noon, in the parish of La- chine, on the other side of the lake, and at the dis-

tance of three leagues from the place where Grant pretends he saw me. But, that another witness whom we must presume to have been in his sober senses, since nothing to the contrary has been proved; an individual invested with the sacred character of a magistrate, should so far forego his duty as a Christian, bound "*not to bear false testimony against his neighbour,*" as not only to declare positively that I was in arms at Chateauguay, on the 4th of November, at dawn of day, but also, on Saturday the 10th; although it has been proved by my witnesses, beyond a shadow of doubt, that on the 4th, at that hour, I was at Lachine, and on the 10th, in the common gaol of this district, which I entered on the 7th of that month, and have since inhabited. Mr. M'Donald presumed, no doubt, that the close confinement which I am subjected to, would preclude all possibility of evidence being procured to rebut these statements; that none but the eye of the Unseen would be enabled to detect a fraud so well calculated to effect his nefarious designs; but, thanks to my kind friends, ample means have been afforded me, not only to convince you, Gentlemen, of the falsity of his testimony with regard to myself, but, doubtless, to induce you, likewise, to reject all his testimony. True, after having heard his evidence contradicted by my witnesses, Mr. M'Donald stated, in answer to a question proposed to him by the Court, that, owing to the excitement and confusion of the moment, he might have fallen into error, in stating

that he saw me on the 10th. Such an error might possibly have occurred, were that statement taken alone ; but when considered in connexion with the conversation which he asserted he had with me, on that occasion, the positive averment that I was the leader of his escort, the resentment and partiality displayed by him, while giving evidence against us, and the threats he held out to our witnesses, to intimidate and deter them from appearing in our behalf, his false assertions cannot, by any sketch of charitable feeling, be attributed to a mere lapse of memory. The above statement, made by John Lewis Grant and John M'Donald, the only witnesses who have attempted to impeach my character, having been thus directly contradicted and disproved, there remains of record against me but one assertion, made by Mr. M'Donald. That assertion, unsupported, as it is, by the testimony of any other witness, would form no legal proof to support an accusation of this nature, even under the very improbable supposition that the Court would feel disposed to give the slightest credence to any portion of Mr. M'Donald's evidence. I, therefore, await with confidence, at your hands, Gentlemen of the Court, that acquittal which will restore me to the arms of an aged parent, whose gray hairs may not, I trust, go down in sorrow to the grave.

*Comments of Jean Marie Thibert.*

Gentlemen,

I am another of the prisoners who have been so decidedly marked out by Mr. M'Donald, in his evidence, as having been in arms during the whole time that he was at Chateauguay a prisoner; yet, Gentlemen, strange to say, I was, as I have proved by Pierre Rochon, a fugitive, and concealed in different parts of the country, above the village of Chateauguay, from the 4th until the 10th of November. It is, however, not astonishing, that Mr. M'Donald's evidence should be so flatly contradicted respecting myself, when it has been so positively set aside with regard to a fellow-prisoner, Ducharme, whom he distinctly swore to have commanded the party which proceeded to *La Pigeonnière* on the 10th; although, at that very time, Ducharme was a prisoner in the Montreal gaol. I must beg to be allowed, in order to shew the incredible character of Mr. M'Donald's testimony, generally to weigh, even more heavily than my fellow-prisoner has done, upon that part of his evidence; and, should the Court be of the same opinion as I am, it must be compelled, in justice to the Prisoners, in the interests of truth, totally to reject the testimony of that witness, notwithstanding the apparent respectability of his character.

You will recollect, Gentlemen, that Mr. M'Donald calmly and coolly swore that Ducharme was the one who came into the room where he was imprisoned, and told them that the Americans had

taken Napierville, ordering them, at the same time, to prepare to go thither ; that he was the one who caused them to be tied two by two, and put into carts. But, after having ascertained that the *alibi* was clearly proved, he came before you again, and stated that, owing to the hurry and confusion, and the number of armed men, he might have been mistaken as to the person referred to upon that occasion. Gentlemen, is not that too strange an absurdity to be believed ? Another individual, who comes alone into the room, to relate an event of such importance, who ties the witness, who escorts him from Chateauguay to *La Pigeonnière*, to be mistaken for the man whom the witness declared he had seen during all the week, actively engaged, and under arms in the rebel ranks ! Gentlemen, Ducharme's is not a face to be mistaken for another ; his is not a countenance to be easily forgotten. Mr. M'Donald's desire of revenge for his own wrongs, can alone explain his testimony. To that revenge, Ducharme and I were both to be sacrificed. According to his statement, we were both drilling ; we were both in arms all the week ; when, in fact, (as it has been clearly proved,) the one was in prison, the other concealed in the woods. Thus, Gentlemen, the evidence of Mr. M'Donald, regarding me, being set aside, (as it must be by you all,) what remains against me ?—Pierre Reed proves that I was one of the band that went to Caughnawaga ; that I ordered him to go to the Sault, and that I was arm-

ed with a gun. Gentlemen, this is false. Does this evidence agree with that of the two Loiselles, both of whom proved that, when trying to avoid being forced to join the insurgents, I was flying towards my home, when arrested by one Villamme, and forced, by threats, even at the muzzle of a gun, to go to the camp? Bruyère also states, that he saw me on the way to the Sault, but unarmed. The evidence of these witnesses, even though it were not so contradictory as it is, would still, from the circumstance of their being accomplices in the crime imputed to me, be insufficient in law, to convict me of High Treason, when unsupported, as it is, by other testimony. I, therefore, pray an acquittal.

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*Comments of Joseph N. Cardinal.*

Gentlemen,

The imputations cast upon me by Mr. John McDonald, must, for the reasons set forth by my fellow-prisoners, (reasons too obvious to dwell upon,) be set aside. I would merely ask the Court if it is not possible, nay, highly probable, that, had the Court questioned him as to his certainty with regard to all the material assertions made by him against us, he would have declared himself to be equally doubtful, as in reference to his statement respecting Ducharme? If excitement and confusion operated on his mind, to such an extent as to induce him to attest upon oath, the purport and precise words of a conversation which he alleged

he had held at Chateauguay with that individual, at a time when the latter was in this city, is it not to be presumed that all his statements, with regard to what occurred on the first night of his imprisonment, when his excitement and confusion might be supposed to have been at the highest pitch, are wholly unworthy of credence? But this, though a strong argument against his testimony, dwindles into weakness, when compared with the startling fact that he has been directly contradicted by positive and unimpeachable evidence, in five material points. The evidence of John Lewis Grant, upon the ground assigned by Ducharme, is equally incredible, at least with regard to any thing which he pretended to have witnessed on the night of the 4th November last. The evidence given by De Lorimier does not tend to establish the charges, inasmuch as no overt act laid in the charges, nor any other, has been proved by him. Ténihatié has named me, but merely to state that he saw me a prisoner in the house of an Indian, at Sault St. Louis. This is the only admissible, the only legal testimony adduced against me, inasmuch as the evidence given by Pierre Reed, (fils d'Antoine,) by Pierre Reed, (fils de Joseph,) and by Bruyère, is of that nature which, by some legal writers, has been considered totally inadmissible, and cannot, at least, come under the designation of *proveable* evidence, by which alone an accusation of this nature can be supported.



*Comments of Jean Louis Thibert.*

Gentlemen,

Were the evidence of Mr. John M'Donald not so completely destroyed by the numerous false statements made by him, as clearly demonstrated by my fellow-prisoners who have preceded me, I should enter into a discussion of its merits. But can you, Gentlemen, in adopting, as you necessarily must, the sacred principles of law upon which we rest our defence, give a moment's credence to a single statement made by that witness?—No, Gentlemen of the Court; it would be an insult to suppose, for one moment, that you could do so. The two Reeds and Bruyère have stated that they saw me at Sault St. Louis, on the morning of the 4th; but, Gentlemen, I ask you if it has been proved, in the course of the trial, that the object the band had in view, whatever it may have been, was known to me, or that any person explained that object in my presence?

True, it has been asserted that an individual, in advance of the band, made some explanatory statements; but I humbly contend that, as it has not been established in evidence that any such statements were made in my presence, I cannot be convicted of the traitorous intent of subverting the Government, even though the Court should be of opinion that the testimony of three witnesses, who gave their evidence merely in the hope of obtaining pardon of an offence similar to that which is

now imputed to me, could be considered sufficient.

Moreover, whatever may be the character of the deed, there exists no crime when the outward man is not the free agent of the mind within him. Had I met, and conspired, and agreed, with others, traitorously to subvert and destroy the Government, as charged against me, should I have been seen agitated with fear, and weeping at the idea of being compelled to leave my home, for an object to me unknown?—I had no object in view, but to screen myself from the threats of violence held out to me. I knew nought but the determined purpose of the individual who commanded me.

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*Comments of Joseph L'Ecuyer.*

Five witnesses have mentioned my name in the course of the trial. M'Donald's evidence has already been sufficiently commented upon. Téronhiahéré stated, in the first instance, that he saw me at Sault St. Louis, on the 4th of November last; but, on recollecting himself, said positively that he did not see me. There remains, then, nought against me, save the testimony of the two Reeds and Bruyère. This testimony is not of that unimpeachable nature which the law demands in support of a charge of High Treason; moreover, the traitorous intent not been proved against me.

*Comments of Antoine Côté.*

The evidence which affects me is so contradictory and imperfect, that, I trust, the Court will not hesitate to declare it wholly insufficient to support the accusation preferred against me. The first witness, Pierre Reed, (fils d'Antoine,) stated distinctly that I was at Sault St. Louis, on the 4th November; whereas Pierre Reed, (fils de Joseph,) proves that I was not there. The Reeds both concur in affirming that, wherever they pretend to have seen me, I was not armed. On the other hand, Téronhiahéré, the only witness who states that I was at the Sault, said I was armed with a gun. If the evidence of the Reeds be taken, that of Téronhiahéré must, necessarily, be rejected; in that case, the assertion of my having been in the band, will be supported only by two witnesses, against whose testimony the strongest objections have been urged by some of my fellow-prisoners who have preceded me, tending to shew that such evidence can only be admitted in support of other testimony, and can never be considered, when alone, as sufficient to convict. If, on the other hand, the evidence of Téronhiahéré be taken, and that of the Reeds rejected, there will remain but one witness against me. In either case, I am entitled to, and confidently pray for, an acquittal.

*Comments of Edouard Thérien.*

Gentlemen,

Mr. McDonald has alleged that I was at Chateauguay bridge, under arms. The credibility of this witness has been utterly destroyed. Pierre Reed and Bruyère are the only other individuals who state that they saw me, and they merely assert that I was at the bridge, without connecting me with any armed band that might have been there; nor does either of them state that I was armed. Even supposing their evidence to be unimpeachable, there exists not of record sufficient proof to convict me of the crime laid against me. I, therefore, confidently claim from you, Gentlemen of the Court, that acquittal which, by law, I am entitled to.

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*Comments of Duquette, Lepailleur, Guimond and  
Dusault.*

As the hour fixed for the meeting of the Court rapidly approaches, we are compelled to unite our defence, and to entreat the Court to afford us the benefit of all the objections urged by our fellow-prisoners, against the evidence produced on the part of the prosecution, in so far as they can be made to apply to our cases; and, trusting to your generosity and justice, we leave our cases, without any comment, to your investigation.

*Comments of Louis Lesiège, otherwise called Lesage dit Laviolette.*

Gentlemen,

My name has been mentioned by only one, out of the number of witnesses produced by the Crown, namely, by Mr. M'Donald; there is, therefore, no legal evidence before you, to support the charges exhibited against me, and I await at your hands that acquittal which, in law, I am entitled to, and now humbly demand."

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The Address of the Prisoners having been heard, the Court is cleared; and, after about two hours, the Judge Advocate, Mr. Day, reads the following Reply, partly prepared on the preceding day:—

*"May it please the Court,*

This protracted trial has, at length, reached the point at which it becomes the duty of those conducting it, to offer their closing remarks upon the proceedings before the Court, with a view of recalling to attention the legal definition of the offence charged; of examining how far the facts proved correspond with this definition; and, finally, of directing the enquiry, whether the crime of High Treason, as charged against the prisoners, has been brought home to each individual among them.

The duty, in this instance, although of an important, and we may add, a solemn nature, is by

no means difficult of performance; the rules of the law are so precise, and the evidence adduced, embarrassed by so little of confusion or contradiction on material points, that the whole case may easily be thrown into a compact and intelligible form.

Before, however, entering upon our task, we beg leave respectfully to premise, that, for its better execution, we have endeavoured to divest ourselves of the zeal of the Advocate, and to assume, in its stead, the impartial spirit of the Judge, casting aside all desire to construct or strengthen a case by professional ingenuity; and feeling that human life may be, in some degree, hanging upon our words, we would present that case, and that case only, which we truly and conscientiously believe to be made out, in law and evidence, before the Court; and we would further state, that although, in accordance with the usual practice of Courts Martial, we abstain from referring to books of authority in support of the opinions which we may have occasion to express on legal points, yet, that such opinions have been formed with deliberation and research, and under a full sense of the grave responsibility of our present position.

With these preliminary observations, we proceed to call to the recollection of the Court the exposition contained in our opening Address, of the crime of High Treason. We then stated, in

the precise terms of the law, that *when a man doth compass or imagine the death of the King, or if a man levy war against the King, in this realm, he shall be adjudged guilty of treason*; and we then also enumerated certain overt acts, which have been declared by solemn decisions of competent authority, to constitute sufficient evidence of a compassing of the King's death, and of levying war against him.

The overt acts thus enumerated were: first, the deposing or taking possession of the King or Government, or preparing to do so; second, the direct levying of war, and consulting to levy war; third, joining with rebels in any act of rebellion; fourth, giving assistance or intelligence to rebels; fifth, constructively levying war, by insurrection, to reform supposed grievances. The overt acts laid in the charge against the prisoners, in some respects, correspond with those above mentioned, and in others, are of a far more marked and decided character.

These specific acts are, first, that the prisoners met, conspired and agreed to subvert the Government in this Province, and depose the Queen from her legislative rule in it; second, that, for that purpose, they incited and assisted in a rebellion; third, that, assembled and armed, they prepared and levied war against Her Majesty, in furtherance of the said rebellion; and, fourth, that they were found in open arms against her Govern-

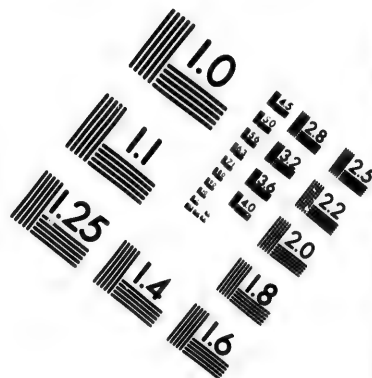
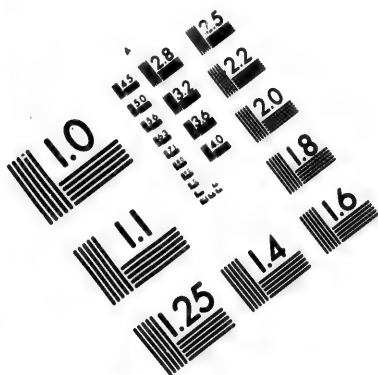
ment. These acts, or any one of them, without doubt, amount, in law, to the crime of High Treason.

Having thus ascertained the nature of the offence, our next step is to enquire what facts have been established by the evidence before the Court; and this enquiry naturally divides itself into two branches: 1st, whether it be made out in evidence that the offence of High Treason, or, in the language of the charge, "Treason against our Sovereign Lady the Queen," was committed by any body of men at Chateauguay or Caughnawaga, between the first and seventh days of November last; and, 2d, if such offence were committed, whether the prisoners at the bar have been identified as having participated in it.

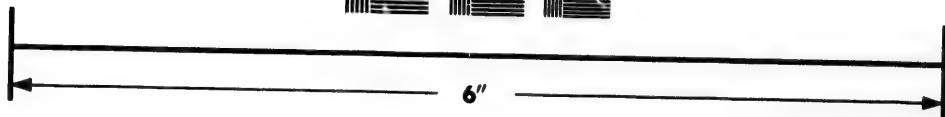
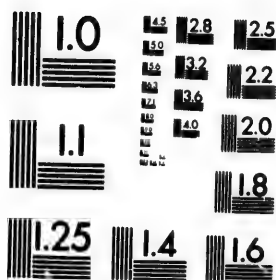
That the offence of High Treason was committed by a body of men, as well at Chateauguay as at Caughnawaga, between the first and seventh days of November last, we consider established beyond the possibility of a doubt, by the statements of the following witnesses; some of them deposing to the existence of assemblages of armed men, avowing an intention to overthrow the Government, and declare independence; and others, showing that such assemblages were acting in concert and intelligence with others, rising in general rebellion throughout the Province.

First, we advert to the testimony of John Lewis Grant, the first witness for the prosecution, who, after detailing his capture and detention as a pri-





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soner, at Chateauguay, on the 3d, 4th, and following days, in November last, by a large body of armed men, possessing, in a considerable degree, the organization of a military force, states that Duquette, one of this body, told him, that, in two or three days, there was a body of Americans coming in, and that he, (Grant,) should be made as free and independent as themselves; and again, that Duquette, one Demarais and the sentries, with Lepailleur and others, (all connected with the body of armed men alluded to,) told him, (Grant,) plainly, that the Americans were coming in, and that they were going to take possession of the country; that there would be a general rising that night, (Saturday, 3d November,) and that the present Government would be overthrown, and he, (Grant,) should get his liberty.

Second. John M'Donald, the second witness for the prosecution, after a detail of his capture and detention on the 3d, 4th, and following days of November, by a body of armed men, and, after confirming and extending Grant's narrative, declares that Jean Louis Thibert, one of the body alluded to, said to him, in answer to a question, "that they were going to declare independence that night," and again, in answer to the question, what was the avowed intention of this body of armed men? the witness states, "to subvert the Government, and declare their independence;" Jean Marie Thibert and Cardinal said so expressly; Cardinal added, "that on that night, (Saturday,

the 3d,) the whole Canadian population had risen, and would be in possession of all Canada, except Quebec."

Third. George Delorimier, the third witness for the prosecution, gives a circumstantial account of the approach of a large number of armed men to Caughnawaga, for the purpose of disarming the Indians; and to a question proposed to him, answers, "they, (meaning the armed men alluded to,) said that if the Indians would give up their arms, they would not be injured by them, but would be permitted to retain their seignior; they, (the armed men,) said that Beauharnois was taken, and the southern shore of the St. Lawrence, and that l'Isle aux Noix, St. John's and Laprairie were to be taken."

Fourth. Ignace Delille, the fourth witness for the prosecution, after confirming Delorimier's statement, and in some respects extending it, says that Lepailleur, one of the body of armed men, in urging the demand for the Indians' arms, said, "if the Government is displeased, we will protect you."

Fifth. Pierre Reed, the seventh witness for the prosecution, who was in arms at Chateauguay, and in the expedition to Caughnawaga, and has given his testimony as Queen's Evidence, confirms the statements of the previous witness, relative to the large assemblage of armed men at Chateauguay, and the expedition to Caughnawaga, and in answer to a question proposed to him, states, "that

he heard, before leaving Chateauguay, that the habitants were rising in every direction ; this he heard while at Chateauguay, with the band, on the Saturday night, (3d November.)

Sixth. The Indian, Teronhiahéré, the eighth witness for the prosecution, confirms the evidence of the previous witnesses who have spoken of the attempt to disarm the Indians, and he states, in answer to a question proposed to him, that he understood that they, (meaning the body who came to disarm the Indians,) wanted to get the arms, to take possession of Laprairie. They said they were going to take Montreal the same day ; they told him, (witness,) so, after they had been made prisoners ; Blanc Dusault was present when some one in the crowd said so ; and again, some one in the crowd said the Canadians had risen in other parts ; they did not say they had taken St. John's, but that they had taken l'Isle aux Noix and Beauharnois, and added, if the Indians would give up their arms, they would take Laprairie.

Seventh. Narcisse Bruyère, who has given testimony as Queen's Evidence, a witness of great importance, in all essential matters, confirms the evidence of the preceding witnesses, and as to what occurred both at Chateauguay and Caughnawaga ; in answer to a question proposed, he stated that "when we, (meaning the band of armed men with whom he was,) got near the Sault St. Louis, he asked Mr. Cardinal what his plans were ; he, (Cardinal) said, "that as soon as they had taken

possession of one place, the mark of independence would be put there, and the Americans would come in, and that they would not before, because they would be considered as murderers, if they were taken, and not as prisoners of war ;” and, again, he says that Guerin and Thérien told him that a blow was to be struck at Laprairie that night, (Saturday, the 3d November,) and asked him if he was not aware of the disturbances there were going to be every where that night ; they said that Laprairie was going to be taken that night.

Such are the facts before the Court relative to the existence of an armed body, assembled with treasonable designs, and aiding in a general rebellion ; they surely afford a full measure of evidence of each and all of the overt acts laid in the charge, viz : the conspiring to subvert the Government, and depose the Queen from her Legislative rule in the Province, the inciting and aiding in a rebellion for that purpose, the preparing and levying war against Her Majesty, and the being found in open arms against her Government.

Were any further evidence necessary on this subject, we might urge, as indications of a treasonable design, the military organization which existed among this assemblage of men, the disarming of Her Majesty’s loyal subjects, and making them prisoners, and the existence of secret societies and secret oaths, as established by Bruyère ; but we feel satisfied that the Court can have no

hesitation in arriving at the conclusion, that the crime of High Treason was committed by a body of men, as well at Chateauguay as at Caughnawaga, between the first and seventh days of November last.

We have now to enquire whether the prisoners at the bar have been identified as participators in this crime ; and in the examination of the evidence, with a view to the settlement of this question, we deem it unnecessary to quote those passages in which the various individuals before the Court are mentioned. Such a course would be exceedingly cumbersome, and serve only to embarrass and perplex ; we shall, therefore, merely name the witnesses who depose to each individual, in order that the number by which he is identified, may be at once ascertained.

We first take up Cardinal, whom we find identified as having been at Chateauguay, on the 3d and 4th, among the armed body of men, by M'Donald and Grant, and as having been at Caughnawaga with the expedition there, by De Lorimier, Ignace Delille and Teronhiahéré, and as having been at both places, by the two Reeds and Bruyère.

The offence is thus brought home to him by eight witnesses, exclusive of two or three who were examined on the defence ; and it may be remembered that the whole evidence goes to show that he was a man of much influence and activity, and held an important station in the rebel Camp.

The next name on the list, is Duquette; he is identified as having been, on the 3d and 4th, in the body of armed men, first, at Chateauguay, by M'Donald and Grant; second, at Caughnawaga, by De Lorimier, Delille and Téronhiaheré; and third, as having been at both places, by the two Reeds and Bruyère: eight, exclusive of two or three witnesses examined on the defence; he appears to have been an active and influential man, and to have held a station of command.

L'Ecuyer was seen, on the 3d and 4th of November, at Chateauguay, in the body of armed men, by M'Donald, the two Reeds and Bruyère: four in all, exclusive of the widow Boudria, who speaks of him in her evidence given on the defence.

Jean Louis Thibert is shewn to have been at Chateauguay, with the rebel force, on the 3d and 4th of November, by M'Donald, the two Reeds and Bruyère; the last three also saw him at the Sault St. Louis: *four* in all, exclusive of the mention made of him by the witnesses on the defence; it must be observed of him that he appears to have been in authority, and that M'Donald was made prisoner by him.

Jean Marie Thibert was at Chateauguay, and accompanied the expedition to the Sault St. Louis, but stopped short of the latter place, in the wood near it; this appears from the testimony of M'Donald, the two Reeds and Bruyère: *four* in number.



Joseph Guimond was seen, on the 3d and 4th of November, among the rebel force at Chateauguay, by M'Donald and the two Reeds, who also saw him in the expedition to the Sault ; the witnesses against him are *three* in number.

Louis Guérin dit Dusault was seen, among the rebel forces, on the 4th of November, by M'Donald, at Chateauguay and in the expedition to the Sault, by the two Reeds and Bruyère, and at the Sault, only by Delille and Téronhiahéré : *six* in all.

Antoine Côté was seen, on the 4th of November, at Chateauguay, by M'Donald, and there and at the Sault, by the two Reeds, and at the Sault alone, by Téronhiahéré : *four* in number.

François Maurice Lepailleur is proved to have been, on the 3d and 4th of November, at Chateauguay, by M'Donald, there and at the Sault, by the two Reeds and Bruyère, and at the Sault only, by Téronhiahéré, De Lorimier, Delille and Ténihatié : making together eight ; he is proved to have been an active man, and to have held a station of command.

Edouard Thérien was seen at Chateauguay, among the armed force, on the 4th, and at St. Jean Baptiste, in the parish of Chateauguay, by Bruyère, on the 3d, but not with a body of men ; he was with Guérin dit Dusault, and, from his conversation, evidently aware of, and implicated in the disturbances then about to take place ; the witnesses against him are *two* in number.

Leon or Léandre Ducharme was seen at Chateauguay, on the 4th, 5th and 6th, by M'Donald, Grant and Veuve Boudria, a witness examined on the defence.

Louis Lesiége dit Laviolette is identified by but one witness, M'Donald.

Such is the evidence in support of the prosecution; a few words will suffice to dispose of that adduced on the defence, which appears to have had a three-fold object: first, to shake the testimony of M'Donald, by contradicting some of his statements, and of Grant, by shewing he was intoxicated; and second, to prove that force was employed, particularly in the case of the two Thiberts; and third, to establish an *alibi* in favour of Ducharme.

With regard to the testimony of M'Donald and Grant, it may be remarked, that its entire rejection by the Court could not affect the position of any of the prisoners, except Thérien and Ducharme; the others, exclusive of Laviolette, are sufficiently identified without the assistance of these two witnesses; we shall, therefore, reserve what we have to say on the subject of their credibility, until we come to the examination of Ducharme's defence.

As to the question of force, it must be apparent to the Court, that no case has been made out, even in favour of the Thiberts, and much less in favour of the other prisoners. Giving to Jean Marie Thibert the full benefit of the evidence on this point, we find it refers to a period subsequent to

the commission of the offence which has been proved against him. The offence was committed on the night of the 3d and the morning of the 4th, before ten o'clock ; the force, (if force it can be called, which was exercised by *one* man against *six*,) was employed on the 4th, about half-past two o'clock ; the evidence does not meet the case ; it might have been rejected, when offered ; it can now have no influence upon the opinion to be formed of the man's guilt or innocence.

As to Jean Louis Thibert, his pretence of having been forced, is equally unsupported ; the evidence of Couillard, who alone speaks to it, tends rather to criminate, than justify the unhappy man ; aware of the approaching crisis, trembling with apprehension of its consequences, with sufficient time to flee from a participation in its dangers and its guilt, he still goes on, with a strange infatuation, and exhibits himself as an actor and leader in the very enterprise which he professes to deplore.

We must declare, then, that the attempt to prove force or compulsion has failed so totally, that it becomes unnecessary to enquire minutely into the law relative to the nature and degree of force which shall justify a man in concerting with and aiding traitors ; it is enough to state, in the general terms of a writer of high authority, that "the only force that doth excuse, is a force upon the person, and present fear of death, and this force and fear must continue all the time the party re-

mains with the rebels ; it is incumbent upon men who make force their defence, to show an actual force, and that they joined *pro timore mortis, et recesserant quàm citò potuerant.*" We leave to the Court the application of this rule to the case before it.

We now come to the consideration of the evidence adduced by Ducharme to prove an *alibi*, and to an examination of the incidental question, whether he has succeeded in destroying the credibility of the witnesses M'Donald and Grant.

With regard to the *alibi*, Ducharme has proved by Latour and Portelance, that he was at Lachine on the 3d of November, and spent the evening there, and that he was seen there on the 4th, between seven and eight in the morning, and again, between eleven and twelve, and that two or three hours are required to make the passage between that place and Chateauguay. M'Donald says that he saw him at Chateauguay, on Sunday morning, about daylight, on the same day, about four o'clock, and on the Monday or Tuesday following.

Veuve Boudria states he was at Chateauguay on Monday, the 5th, and Grant swears he saw him there, armed, with one Brault, without specifying the day ; but as Grant was captured on the 3d, and Ducharme on the 7th, it must have been between those two days ; the *alibi*, therefore, if proved on the 4th, (which we much doubt,) is not proved on the following days, and, consequently,

cannot avail the prisoner; the evidence adduced in support of it, resolves itself thereby into a ground for impeaching M'Donald's testimony, which now calls for examination.

It must be admitted, that M'Donald has been contradicted in his statement that he saw Du-charme on the 10th of November, and that a strong doubt, if not an absolute contradiction, has been cast upon the accuracy of some other statements, more material to the case before the Court. The rule to be applied to a witness so situated, is that if, without impeachment of general character, he be contradicted on an immaterial point, such contradiction will not discredit him; if he be contradicted in material points, his evidence, when uncontradicted, will not, generally, be altogether rejected, but it will be received with caution, and require to be confirmed. If the prisoner were on his trial for murder, and the evidence against him drawn solely from a witness situated as M'Donald now is, we should be disposed to say, that it would be insufficient to justify a conviction; we give this example as an illustration of our understanding of the rule; but after all is said, it is a question for the conscience of each individual member of this Court, to determine whether, and how far, he believes or disbelieves M'Donald's testimony. As to Grant, the only ground for the impeachment of his credibility, is the statement made by Veuve Boudria, that he had been drunk, and was intoxicated, (*en train.*) We do not think this evidence

has been carried far enough, materially to shake your faith in his statement; he may have been intoxicated, and yet, fully capable of observing and remembering what passed about him; his story is uncontradicted, and generally confirmed by Veuve Boudria; and, moreover, if intoxicated at all, there is nothing to shew that he was so, after Sunday morning, the 4th November, and he does not say that he saw Ducharme upon that day. Upon the whole, therefore, the Court, although it will examine with care the statements of this witness, will not be disposed to declare him unworthy of belief.

We do not especially allude to the character of the witnesses on the defence, because they have proved so little that can avail the prisoners; it ought not, however, to be overlooked, that those upon whom reliance is principally placed, viz: the two Loiselles, Alleine, Veuve Boudria, Dumouchelle and Rochon, appear, from their own declarations, to have been accomplices in the guilt of those for whom they testify, and, like them, liable to be accused before this Court.

And while on the subject of accomplices, it may be well, in answer to a remark of one of the prisoners, in reference to the two Reeds and Bruyère, to satisfy the Court as to the rule applicable to evidence of this nature. The rule is this: that in strictness of law, a prisoner may be convicted upon the testimony of a single evidence, since, where competent evidence is adduced, it is for the

jury to determine on the effect of that evidence ; in practice, it is usual to direct the jury to acquit the prisoner, where the evidence of an accomplice stands uncorroborated in material circumstances ; this, however, is a matter resting entirely in the discretion of the Court.

And it may also be here noted, in answer to an allegation made by Côté, that no act of treason was brought home to him ; that the doctrine of the law, as applicable to all the prisoners, is, that when a connection between several parties is once established, by proof of their conspiring to act in concert together for the attainment of a common object, then, whatever is done in pursuance of the conspiracy by one of the conspirators, though unknown perhaps to the others, is evidence against them all.

In conclusion of the entire case, we feel bound to declare our opinion : first, that the evidence of the offence charged, is perfect against Cardinal, Duquette, L'Ecuyer, Jean Louis Thibert, Jean Marie Thibert, Joseph Guimond, Louis Guérin dit Dusault, Antoine Côté and François Maurice Lepailleur ; second, that if the Court be of opinion that M'Donald is unworthy of credit, even in statements directly confirmed by Grant, and collaterally so by Widow Boudria, the prisoner Ducharme will stand in a doubtful position, and the Court will determine how far he is entitled to the benefit of that humane rule which says, that all doubts shall be resolved in favour of the accused ; third, that

if the evidence of M'Donald be rejected, the criminality of Thérien rests upon the evidence of Bruyère alone ; and fourth, as to Lesiége dit Laviolette, that the evidence is insufficient to warrant his conviction.

We have thus exposed, for the consideration of the Court, the evidence bearing upon the present prosecution, and all material points connected with it. In reply to the moving appeal from the prisoners to your humanity and compassion, we can only say, that the duty resting on the Court is one independent of, and above the impulses of feeling, and must be sternly performed according to the law and evidence of the case.

With these observations, the Judge Advocates, having endeavoured to fulfil their duties before this Tribunal, to society, and to the accused, await the decision which your consciences may dictate, and which justice may approve."

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After the Reply, the Judge Advocate intimates to the Prisoners, that the sentence will not be communicated to them, until sanctioned by His Excellency the Commander of the Forces ; and the Court is cleared, to deliberate upon the verdict.

Here terminates the Trial of the twelve prisoners of Chateauguay and Sault St. Louis.



*Petitions and Executions, &c. &c.*

The sentence has been since known to the public. Two of them have been acquitted, Edouard Thérien and Louis Lesiége, otherwise called Louis Lesage dit Laviolette; the ten remaining others were condemned to death, two of whom, J. N. Cardinal and J. Duquette, were executed.

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Here follows the Argumentative Petition in favour of the Prisoners, submitted to His Excellency Sir John Colborne, on the day which preceded that of the execution of Messrs. Cardinal and Duquette:—

*“ To His Excellency Lieutenant General Sir John Colborne, Knight Grand Cross of Her Majesty’s Most Honourable Military Order of the Bath and of the Hanoverian Order, Commander of Her Majesty’s Forces in the Provinces of Upper and Lower Canada, and Administrator of the Government of the Province of Lower Canada, &c. &c. &c.*

*May it please your Excellency,*

*“ We, Aaron Philip Hart and Lewis Thomas Drummond, of the city of Montreal, Esquires, Counsellors at Law, duly admitted and authorized to practise as such in the Province of Lower Canada, beg leave respectfully to present to your*

Excellency this, our Argumentative Petition, on behalf of Joseph Narcisse Cardinal, Joseph Duquette, Joseph L'Ecuyer, Jean Louis Thibert, Jean Marie Thibert, Léon Ducharme, otherwise called Léandre Ducharme, Joseph Guimond, Louis Guérin dit Dusault, otherwise called Blanc Dusault, Edouard Thérien, Antoine Côté, François Maurice Lepailleur, and Louis Lesiége, otherwise called Louis Lesage dit Laviolette, and to pray, that, in consideration of the causes and matters hereinafter set forth, your Excellency will be pleased to withhold your sanction or approval of any finding or judgment rendered, or to be rendered, by a certain Court Martial, presided over by Major General Clitherow, which assembled at the city of Montreal, on Wednesday, the twenty-eighth day of November now last past, for the trial of the prisoners above named, upon a charge of High Treason:

We beg respectfully to submit the following propositions:—

1stly. That the said Prisoners, as civil subjects of the Crown of England, and not soldiers, were and are not liable to be tried by Martial Law.

2dly. That the Ordinance alledged to have been passed by the Administrator of the Province of Lower Canada and Special Council, as the 2d Vict. c. 3, tending to render the civil subjects of Her Majesty amenable to Courts Martial, and intitled: "*An Ordinance for the suppression of the Rebellion which unhappily exists within this*"

*“ Province of Lower Canada, and for the protection of the persons and properties of Her Majesty’s faithful subjects within the same,”* is illegal and a nullity, and can have no force nor effect in this Province.

3dly. That the said pretended Ordinance, supposing it to be legal, can in no wise effect or be so construed as to extend the controul of Courts Martial, or of any Military Tribunal organized in virtue thereof, to the case of the Prisoners.

4thly. That supposing the Prisoners to be, or to have been, amenable to Martial Law, the proceedings in their case had, have been repugnant to the laws of the land and the practice of Courts Martial, and were and are altogether illegal, null and void.

The doctrine laid down in our first proposition is so unquestionably true, as to require no arguments in support of it; we will, therefore, on this point, restrict ourselves to two quotations, the one from the celebrated Sir Matthew Hale, the other from a report of the case of Sergeant Samuel George Grant, argued in the Court of Common Pleas, in England, Trinity Term, 1792, in which the fundamental principles of this doctrine are fully set forth.

Sir Matthew Hale, in his History of the Common Law of England, in speaking of Martial Law, expresses himself as follows:—“But touching the business of Martial Law, these things are to be observed: firstly, that, in truth and reali-

" ty, it is not a law, but something indulged, ra-  
 " ther than allowed, as a law ; the necessity of  
 " government, order and discipline in an army is  
 " that only which can give those laws a counten-  
 " ance : *quod enim necessitas cogit defendi*. Se-  
 " condly, this indulged law was only to extend to  
 " members of the Army, or to those of the oppo-  
 " site Army, and never was so much indulged, as  
 " intended to be executed or exercised upon  
 " others ; for others, who had not been listed under  
 " the Army, had no colour or reason to be bound by  
 " Military constitutions, applicable only to the  
 " Army, whereof they were not parts ; but they  
 " were to be ordered and governed according to  
 " the laws to which they were subject, though it  
 " were a time of war. Thirdly, that the exercise  
 " of Martial Law, whereby any person should lose  
 " his life, or member, or liberty, may not be per-  
 " mitted in time of peace, when the King's Courts  
 " are open for all persons to receive justice, ac-  
 " cording to the laws of the land. This is, in  
 " substance, declared by the Petition of Right, 3,  
 " cap. 1, whereby such commissions and Martial  
 " Law were repealed, and declared to be contra-  
 " ry to law."—*Hale's Hist. Com. Law, p. 45.*

The opinion of the late Chief Justice Loughbo-  
 rough, as expressed in the case above alluded to,  
 and the arguments of Sergeant Marshall, are so  
 strong and explicit as to induce us to cite them at  
 length, in so far as they are in point :—" Sergeant  
 " Marshall, in support of the motion for a prohibi-

" tion, argued, with great ability and ingenuity,  
 " the following points, on which he pleaded the  
 " Court ought to grant a prohibition: firstly, that  
 " the plaintiff, Grant, was not a soldier, and there-  
 " fore, not liable to be tried by Martial Law, &c.  
 " &c. &c. On the first ground he observed, that  
 " if there be a case in which, above all others, it  
 " becomes the Courts of Westminster to be par-  
 " ticularly watchful over the right of the subject,  
 " it is in the case of a Court Martial deciding on  
 " the extent of its own jurisdiction. It is not dis-  
 " puted that a Court Martial has power to try the  
 " question, 'whether soldier or not;' that power  
 " must be inseparable from their jurisdiction. But  
 " they exercise it at their peril, and it benoves  
 " them to have the most explicit and unequivocal  
 " proof that a man is a soldier, before they ven-  
 " ture to put him on his trial for any offence what-  
 " ever. If it shall be in the power of any Milita-  
 " ry commander to take up a man under pretence  
 " of some supposed Military offence, and it be in  
 " in the power of a Court Martial to give them-  
 " selves jurisdiction over him, by deciding him to  
 " be a soldier, upon evidence such as has been re-  
 " ceived in the present instance, the liberty of  
 " the subject is at an end, and the Army may, as  
 " soon as its commanders shall think fit, become  
 " the sovereign power of this country. That, in  
 " fact, the plaintiff was not a soldier, appears from  
 " the proceedings before the Court Martial."

" Secondly. Evidence was received against the

" plaintiff, which was not admissible by the rules  
 " of the Common Law ; and evidence for him re-  
 " jected, which ought to have been received.  
 " Every Court which assumes the name of a  
 " Court of Justice, must have some principles or  
 " rules for its guidance in the investigation of  
 " truth. The rules of evidence of the Common  
 " Law, at least so far as they are applicable to  
 " criminal proceedings, are neither numerous nor  
 " complex, but plain and simple, and are founded  
 " in wisdom, and established by the experience of  
 " ages. The rules of evidence are, perhaps,  
 " those, of all others, which ought to be kept in-  
 " violate, with the most religious veneration. The  
 " whole administration of justice, both civil and  
 " criminal, in a great measure, depends on them.  
 " A Military Court Martial is the mere creature  
 " of the Mutiny Act, and has not the smallest sha-  
 " dow of authority, but what it derives from that  
 " act. It is impossible that it can have any an-  
 " cient or immemorial rules of evidence peculiar  
 " to itself. Now, it may be laid down, as a clear  
 " and indisputable principle of law, that wherever  
 " an Act of Parliament erects a new Judicature,  
 " without prescribing any particular rules of evi-  
 " dence to it, the Common Law will supply its  
 " own rules, from which it will not suffer such  
 " new erected Court to depart. This would hold  
 " even in matters merely civil, and surely much  
 " more strongly in questions of a criminal nature."

" This is not mere theory, but the law of the

“land, and the general practice of Courts Martial is conformable to it.”

“Lord Loughborough, in delivering the judgment of the Court, amongst other remarks, thus expressed himself:—”

“In the preliminary observations on the case, my brother Marshall, (continued the learned Judge,) went at length into the history of those abuses which prevailed in ancient times. This leads me to an observation, that Martial Law, such as it is described by Hale, and such also as it is marked out by Sir William Blackstone, does not exist in England at all.”

“Where Martial Law is established and prevails in any country, it is of a totally different nature from that which, by inaccuracy, is called Martial Law, merely because the decision is by a Court Martial, but which bears no affinity to that which was formerly attempted to be exercised in this kingdom, which was contrary to the constitution, and has been, for a century, totally exploded. Where Martial Law prevails, the authority under which it is exercised, claims a jurisdiction over all Military persons, in all circumstances; even their debts are subject to enquiry by a Military authority. Every species of offence committed by any person who appertains to the Army, is tried, not by a civil judicature, but by the judicature of the Regiment or corps to which he belongs. It extends also to a great variety of cases not relating to the dis-

"cipline of the Army, in those States which sub-  
 "sist by Military power. Plots against the So-  
 "vereign, intelligence to the enemy, and the like,  
 "are all considered as cases within the cognizance  
 "of the Military authority. In the reign of King  
 "William, there was a conspiracy against his per-  
 "son, in Holland, and the persons guilty of that  
 "conspiracy, were tried by a Council of Officers.  
 "There was also a conspiracy against his person  
 "in England; but the conspirators were tried by  
 "the Common Law. Within a very recent pe-  
 "riod, the incendiaries attempting to set fire to  
 "the docks at Portsmouth, were tried by the  
 "Common Law. In this country, the delinquen-  
 "cies of soldiers are not triable, as in most coun-  
 "tries in Europe, by Martial Law; but where  
 "they are ordinary offences against the civil peace,  
 "they are tried by the Common Law Courts.  
 "Therefore, *it is totally inaccurate to state Mar-*  
 "*tial Law as having any place whatever, within*  
 "*the realm of Great Britain.* But there is, by  
 "the providence and wisdom of the Legislature,  
 "an Army established in the country, of which it  
 "is necessary to keep up the establishment. The  
 "Army being fixed by the authority of the Legis-  
 "lature, it is an indispensable requisite of that es-  
 "tablishment, that there should be order and dis-  
 "cipline kept up in it, and that the persons who  
 "compose the Army, for all offences in their Mi-  
 "litary capacity, should be subject to a trial by  
 "their officers. This has induced the absolute



“ necessity of a Mutiny Act accompanying the  
 “ Army. It has happened, indeed, at different  
 “ periods of the Government, that there has been  
 “ a strong opposition to the Establishment of the  
 “ Army ; but the Army being established and vo-  
 “ ted, that led to the establishment of a Mutiny  
 “ Act. It is one object of that Act, to provide for  
 “ the Army ; but there is a much greater cause  
 “ for the existence of a Mutiny Act ; and that is,  
 “ the preservation of the peace and safety of the  
 “ kingdom ; for there is nothing so dangerous to  
 “ the civil establishment of a State, as a licentious  
 “ and undisciplined Army. The object of the  
 “ Mutiny Act, therefore, is to create a Court in-  
 “ vested with authority to try those who are a  
 “ part of the Army, in all their different descrip-  
 “ tions of officers and soldiers ; and the object of  
 “ the trial is limited to breaches of Military duty,  
 “ even by that extensive power granted by the  
 “ Legislature to His Majesty, to make Articles of  
 “ War. Those articles are to be for the better  
 “ government of his forces, and they can extend  
 “ no further than they are necessary for the regu-  
 “ larity and due discipline of the Army.”

The second proposition is one of vital import-  
 ance to all Her Majesty's subjects in this Pro-  
 vince ; and we trust we shall be enabled to esta-  
 blish its soundness, by the following arguments  
 and reasons :—

1stly. Because the said pretended Ordinance  
 of the 2d Vic. c. 3, was not passed by the Gover-

nor, or person authorized to execute the commission of Governor, by and with the advice of Councillors, or the majority of Councillors, in Council assembled, in manner and form as required by the Act of the Imperial Parliament of Great Britain, passed in the first year of Her Majesty's reign, and intituled: "An Act to make temporary provisions for the Government of Lower Canada;" but was passed by and with the advice of a supposed Council, consisting of persons not appointed in and by virtue of a Commission, or Commissions, issued by Her Majesty, under the Great Seal of the United Kingdom, or of any instructions under Her Majesty's Signet and Sign Manual, and with the advice of her Privy Council; inasmuch as the said Council, by whom the said first above mentioned Ordinance purports to have been enacted, was dissolved, by Letters Patent under the Great Seal of the Province, issued by His Excellency the Earl of Durham, Governor-General of the Province, bearing date on the first day of June, one thousand eight hundred and thirty-eight, and another Special Council was subsequently organized in its stead.

The instructions given by Her Majesty, at the Castle of Buckingham, on the fifteenth day of February last past, were set aside by the subsequent Royal Instructions, dated from Windsor, April thirteenth, one thousand eight hundred and thirty-eight; and the Earl of Durham, consequently, dissolved the Council, as it was composed on the

first of June last: a proceeding anticipated by your Excellency, as it appears by the letters addressed by your Excellency to each gentleman whom you required to accept the appointment, wherein it is stated that *the appointment was but provisional, as the Royal Instructions conveyed to your Excellency, would be REVOKED and SUPERSEDED by those of which the Earl of Durham would be the bearer.*

We would most respectfully direct the attention of your Excellency to the Proclamation issued by your Excellency, from the Castle of St. Lewis, at Quebec, on the first day of November last, notifying the inhabitants of this Province, that the Administration of Government had devolved upon you, and that your Excellency had assumed the same, wherein is contained the following words: "I have, therefore, with the advice of Her Majesty's Executive Council of this Province, thought fit to issue this Proclamation, to make known the same; and do hereby require and command that all Her Majesty's officers and ministers in the said Province, do continue in the due execution of their several and respective offices, places and employments." It, therefore, appears evident to us, that, inasmuch as no dissolution of the Council, as constituted by the Earl of Durham, had taken place, and as no re-appointment of the Council, organized under the instructions issued by Her Majesty, on the fifteenth day of February last, had been made, the Coun-

cillors by the Governor-General appointed, were the Special Councillors by whom your Excellency should have been advised, from the period when your Excellency reassumed the Administration of the Government of this Province.

2dly. Because the said pretended Ordinance purports to have been passed upon the eighth day of November last, at a time when no Legislature was in session in this Province, inasmuch as the said supposed Council, by the Proclamation of your Excellency, dated at the Castle of Saint Lewis, at Quebec, on the second day of November last, was convened to meet on the ninth day of the said month of November, at the Government House, at the city of Montreal.

It is clear that the body, consisting of the Governor and Special Council, being altogether different in constitution, from either the *consilium Regis Ordinarium*, or the *Magnum Consilium*, and being nought else but a controlled and restricted Legislature, must be governed, as far as possible, by laws and usages of Parliaments, whether Imperial or Colonial. "Now, it is an established rule, that Parliament shall be called to meet upon a certain day, and at a certain place. "*Faciemus Summoneri, etc. . . . ad certum diem, et ad certum locum*, says *Magna Charta*; and the rule is never departed from. It is likewise admitted, that Parliament begins at the day to which it was prorogued, and *not before*." Arguing, then, by analogy, we contend that the Pro-

clamation of His Excellency, convening the supposed Councillors to assemble on the ninth of November last, should have been carried into effect by the assembling of the said supposed Councillors, to proceed to business upon that day. And this doctrine is founded upon common justice, as the interests of Her Majesty's subjects require that every Special Councillor should have an opportunity of giving his vote, and declaring his opinion upon every question affecting the lives and properties of his fellow-subjects, and the general welfare of the Province ; a privilege which he might be prevented from exercising, by the circumstance of the Council being assembled at a day earlier than that which was the only day known to him, as the one appointed for his appearance at such Council.

3dly. Because, supposing the said Special Council to have been legally organized, and duly convened, the Administrator of the Government, with the aid of such Special Council, could not pass any law tending, like the said pretended Ordinance, to set aside the Common Law of England, and wholly to supersede the mode of administering the Criminal Law, hitherto followed in this Province. The position, that no Colonial Legislature can enact any Statute or Ordinance doing away, or interfering with the Common Law of England, has been assumed and ably supported by several learned Jurisconsults. The Attorney General Rawlin, thus speaks of the power of Co-

lonial Legislatures :—" But, on the other hand, it  
 " cannot be granted that they are capable to en-  
 " act, at their own pleasure, what they think fit :  
 " for they cannot, by a law, alter the Common Law  
 " of England, and the settled course of proceed-  
 " ings thereon. They cannot change the com-  
 " mon securities of the kingdom." But were we  
 to admit that, in some cases, a Colonial Legisla-  
 ture may depart from this rule, that admission  
 could not impair the truth of our proposition, in-  
 asmuch as the said pretended Ordinance, having  
 for its object to set aside, in this Province, the  
 Common Law of England, to abrogate the provi-  
 sion of *Magna Charta*, to repeal the Statute of  
 the Imperial Parliament of the 25th Edward III,  
 cap. 3, commonly called the Statute of Treasons,  
 together with the divers expositions of that Sta-  
 tute, by different laws enacted since that period,  
 and wholly to destroy the securities common to all  
 the civil subjects of Her Majesty, has been enact-  
 ed in direct contravention of the Imperial Statute  
 of the 1st Vic. c. 9: which, in creating that tem-  
 porary species of Legislature, expressly limited  
 its power by the following restrictive *proviso* :--  
 " Nor shall it be lawful, by any such Law or Or-  
 " dinance, to repeal, suspend, or alter any provi-  
 " sion of any Act of the Parliament of Great Bri-  
 " tain, or of the Parliament of the United King-  
 " dom, or of any Act of the Legislature of Lower  
 " Canada, as now, (then,) constituted, repealing or  
 " altering any such Act of Parliament."

In one word, the passing of the said pretended Ordinance has presented the strange anomaly of a subordinate Legislature, setting aside an important portion of that Charter to which it owes its existence. But it were vain to dwell longer on a point so fully discussed, when the Imperial Parliament declared the illegality and absolute nullity of a proceeding somewhat similar in character, though bearing no comparison with the supposed Ordinance now under consideration, in regard of the disastrous tendency of the latter enactment.

3d Proposition:—*That the said pretended Ordinance, supposing it to be legal, cannot be so construed as to extend the controul of Courts Martial, or of any Military Tribunal organized in virtue thereof, to the case of the Prisoners.* To support this proposition, we have only to state, that several of the Prisoners were in the custody of the Civil Authorities, previous to the proclamation of Martial Law by your Excellency, on the fourth day of November last, and that all had been arrested before the passing of the said pretended Ordinance.

If, therefore, the said pretended Ordinance were made to extend to them, that enactment must evidently be retroactive and retrospective, which may not be the case with a penal law. This principle stands recognized by the Jurisprudence, not only of England, but likewise of all other civilized countries. In England, the rule and law of Parliament are, that : "*Nova constitu-*

“*non futuris formam debet imponere ; non præteritis.*” *La Loi ne dispose que de l'avenir ; elle n'a point d'effet rétroactif.* Such is the rule laid down by the second article of the *titre préliminaire de la publication des lois*, the result of the sage deliberations of the most learned French Jurisconsults. And, indeed, it would be a monstrous doctrine, that a criminal Statute should have the effect of an *expost facto* Law. This doctrine is most strongly and pointedly upheld by a learned Barrister, (*Paca*, in his argument reported in Chalmer's opinions, to the following effect:)—“It is an established rule of law, that statutes have no retrospect; they look forward only, and prescribe for the time to come: for, upon no principle of natural justice, can a man's actions fall within the cognizance of a law made and enacted *expost facto*.” The following authorities are equally conclusive on this point:—“And not only is it the doctrine of the English Law, that a statute is not to have a retrospective effect; but it is also founded upon the principles of general Jurisprudence. A retroactive statute would partake, in its character, of all the mischiefs of an *expost facto* law, as to all crimes and penalties, and in matters relating to contracts or property, would violate every sound principle. *No act or omission done or made before the promulgation of the law which forbids it, can be punished as an offence.*”



“ If an act or omission be made an offence by  
 “ one law, and the penalty be altered by another,  
 “ no breach of the first law, committed before the  
 “ promulgation of the second, can be punished by  
 “ inflicting the penalty of the latter.”

The pretended Ordinance, known as the 2d Vic. c. 3, appears to have been drawn up much in the words of the Act of 1798, passed in Ireland, and is, in most places, copied almost *verbatim et literatim* from the latter Act; but, on comparing the latter with the former, we find that the Act of 1798 is as strictly prospective, as the pretended Ordinance is retroactive. Its provisions clearly extend only to those who should be arrested and taken, subsequent to the passing of the statute. So, likewise, is the Imperial Act of the 1st and 2d William IV., (commonly called “the Irish Coercion Bill,”) purely prospective, as will be found on reference to its provisions.

The Ordinance of the 2d Vic. c. 3, even supposing it to have been legally passed, being one restraining the Common Law, must be construed most strictly and restricted, wherever it encroaches upon the rights and liberties of the subject. In support of this doctrine, we beg respectfully to quote the following authorities:—“Every statute which is penal, and which goes in derogation of the Common Law, must be construed “strictly; and this is a common saying.”—*Viver’s Abridgement, verbo Statute, No. 96, page 521.*

*Keilwer*, 96, p. 6. c. 22, Henry I: "Acts of Parliament which take away the Trial by Jury, and abridge the liberty of the subject, ought to receive the strictest construction."—*Dwarris on Statutes*, p. 749, 4 *Bing. Looker vs. Halcombe*. We also find an *expost facto* law, which can never be penal, cannot even be strained to prevent a party from obtaining the benefit of a contract to which he was entitled, at the time the contract was made: how much more careful must we be to prevent a law from being so construed, as to deprive a person of the rights and liberties to which he was entitled previous to the passing of the law? We would also remind your Excellency of the words used by Sir William Follett, who introduced the restrictive *proviso* into the Act 1st Vic. c. 9: "As to the power of setting aside the Courts of Justice and the ordinary administration of the Criminal Law, it cannot be supposed that any such monstrous power was conferred by any part of the Act. Yet, if the Ordinance be declared or considered to affect the prisoners, they will have been deprived of the Trial by Jury, and of the mode of trial granted to them by the statute to which they were entitled, previous to the passing of the Ordinance."—*See also Lord Raymond's Reports*, 2d vol. 1352, 10 *East. Wilkinson vs. Meyer*.

Your Excellency's attention must be directed to the words in the preamble of the Ordinance, which induces the necessity of providing a speedy

trial of persons offending, as therein set forth, after stating the fact, that your Excellency had promulgated a Proclamation of Martial Law, which shows that the intention had in view, in passing the Ordinance 2d Vic. c. 3, was merely to facilitate the action of that law already proclaimed. It would, therefore, be monstrous to suppose for a moment, that any persons could be affected by that Act, who were not contemplated by the proclamation which forms its basis.

Before concluding our enquiry into the important questions which engage our attention, we would beg to submit, in reference to 2d Vic. chap. 5, purporting to be an Ordinance passed to define the period when the rebellion shall be taken and held to cease, whether it be competent for the Administrator of the Government in time of peace, and when the ordinary Courts of Justice are open, to take from them that jurisdiction conferred upon them by statute. The recognition of such a principle would at once place in the hands of the Administrator, a plenitude of authority unknown, and repugnant to the spirit of the English Constitution. Yet, strange to say, such is the effect of the enactment lastly referred to. The two supposed Ordinances of 2d Vic. c. 3 and 5, have been drawn out in a mode somewhat similar to the Irish Statute of 1798; but were they, (although, in some parts, evidently copied from that Act,) similarly enacted, or as legal in their intent, effect, or operation?—By no means: the Statute of 1798

was passed by a competent Legislature, and is drawn up in such manner as most jealously to preserve the rights of the subject, inviolate. It states distinctly the cause of enacting the Statute, the great necessity of conferring the extraordinary powers therein bestowed, the urgent demand for instant and the most summary and speedy proceedings. It is in no way to be construed as retroactive; it regards merely what shall be done during the continuance of such rebellion, from and after the passing of that Act, with any persons acting, aiding, or assisting in the Rebellion, and permits the taking and detaining, &c. It concerns the future, not the past. The Act of 1798 was the offspring of the most urgent necessity, and was passed, (though reluctantly,) by the Lords Spiritual and Temporal, and Commons then in Parliament assembled. But, notwithstanding the then actually existing Rebellion, we do not find that the Irish Parliament enacted any statute, empowering the Vice-Roy to define at what time the Rebellion should be deemed to have ceased, and we will conclude by asking: Have the Courts of Justice been suspended?—Is the Province now in a state of insurrection?—Has not peace been so far restored, that the Courts of Justice might, without interruption, take cognizance of the offences with which the prisoners stand charged?

The irregularities which may be re-argued in the proceedings preparatory to, and during the trial,

tending, as they did, so materially to impair, if not wholly to destroy, the means of defence which the prisoners, even before a Court Martial, were by law entitled to avail themselves of, should alone, we humbly conceive, even though all other objections were overlooked, have sufficient weight to induce your Excellency to refuse your Excellency's sanction to any judgment which may have been, or hereafter may be given by the said Court, in reference to this trial. A few of the many legal objections to the proceedings in question, we beg leave to submit to your Excellency :—

1stly. The jurisdiction of the members of a Court Martial is confined to a *single matter* and a *single prisoner*. This principle, founded on the Articles of War and the oath of the Members, is supported by the highest authorities; amongst others, Hale, in his History of the Common Law, and by the practice generally observed by Courts Martial. Yet, in this instance, the prisoners, *twelve in number*, have been arraigned and tried collectively, and have been thereby deprived of the time necessary for preparing and arranging their arguments and other means of defence. A few hours only, (from Wednesday the fifth instant, at four in the afternoon, until the following morning, at eleven,) a space of time insufficient to enable even one of their number to prepare a suitable defence, was allowed them to analyse the immense volume of evidence, indiscriminately re-

corded for and against them, and to prepare such a defence as the importance of the matter would have seemed to demand.

2dly. In cases of High Treason, when taken cognizance of by the Courts Martial, the accused must be furnished, ten days before trial, with a copy of the charges, a list of the witnesses to be produced, and of the officers who are to sit in judgment upon them; whereas, in this case, the prisoners were not notified of their approaching trial, until Saturday, the twenty-fifth day of November last, at a late hour in the evening, when a copy of the charges alone was furnished them.

That a list of the witnesses and of the Members of the Court should be so furnished in *all cases*, is laid down as an *axiom* by Tytler; and although other writers on the constitution and practice of Courts Martial, deny the correctness of the doctrine in its fullest extension, yet are they all unanimous in declaring that, in cases of High Treason, these advantages must be extended to the accused. In fact, the Statute passed by the Imperial Parliament, in the 3d and 4th years of the reign of Queen Anne, chap. 16, expressly provides, that persons tried by Court Martial shall have the benefit of the Act for regulating trials in cases of Treason and misprision of Treason; the Statute therein alluded to, being the 7th Anne, chap. 21, which provides, that all persons indicted for High Treason, or misprision of Treason, shall have, not only a copy of the indictment, but

a list of all the witnesses to be produced, and of the Jurors impanelled, with their professions and places of abode, delivered to them ten days before the trial, and in the presence of two witnesses, the better to prepare them to make their challenges and defence.

Not only were the Prisoners kept in total ignorance of their approaching trial, until three days previous to their arraignment; but no list of the witnesses to be produced, no intimation of the names or qualifications of those who were called to decide upon their fate, was ever communicated to them.

These restrictions were, in their case, peculiarly oppressive, inasmuch as being all, with one single exception, inhabitants of the parish of Chateauguay, situate on the southern shore of the Saint Lawrence, and the day following that on the evening of which they were notified for trial, being the Sabbath day, they could scarcely communicate with any of their relatives, before the awful hour of arraignment had arrived. If, struggling against such disadvantages, they succeeded in convicting the principal witness produced against them, of the most glaring perjury, and in impeaching the testimony of another, might they not, we humbly ask, (had the privileges which, by law, they were entitled to, been extended to them,) have found means to impeach all the witnesses of the Crown, with equal success, and set at nought the whole of the evidence adduced against them?

We ask if it was not possible?—From information obtained since the trial, we deem it more than probable, that such would have been the result. The mere possibility of success, had a list of witnesses been furnished, renders the withholding of such list, we do not say illegal, (for it is so in all cases,) but, in this instance, highly unjust.

The Prisoners have a complaint equally grievous to make, on the ground of no list of the Members of the Court having been furnished to them, inasmuch as they have been thereby stripped of a privilege which is never denied to the meanest soldier in the ranks, how trivial soever may be the offence he is arraigned for: we mean the right of challenging the individuals who may be called upon to judge him.

3dly. During the course of the trial, several Members of the Court absented themselves, on various occasions, during the examination of witnesses, and on returning, resumed their seats. These facts are established by the *affidavits* herewith produced, and respectively marked: A, B, C, D. The circumstance of the Members alluded to having so absented themselves, although each withdrew but for a short period of time, is, of itself, sufficient to annul the whole proceedings; and, in support of this position, we respectfully beg to quote the following passage from Simmon's Constitution and Practice of Courts Martial, page 175, Ed. 1835:—"As it is essentially necessary



" that the examination of witnesses should take  
 " place in the presence of all the Members of the  
 " Court; and as, in fact, no act performed by a  
 " part of the Court can be legal, the unavoidable  
 " absence of any Member, by sickness or other-  
 " wise, at any period, necessarily prevents his  
 " resuming his seat." The validity of this custom,  
 which has ever prevailed, so far as the author can  
 ascertain, in the British Army, has recently been  
 marked by the concurrence of General Lord Vis-  
 count Combermere. His Lordship, in an order  
 dated: "*Simta, 17th September, 1828,*" remarking  
 on the proceedings of a General Court Martial  
 held at Denapore, on Lieutenant E. Reily, of His  
 Majesty's 13th Light Infantry, says: "It appears  
 " that, on the Court assembling on the 6th day,  
 " one of the Members was taken ill, and obliged  
 " to withdraw. A sufficient number remaining,  
 " the Court proceeded in the hearing of evidence  
 " for the defence; on the next day of assembling,  
 " the Member who had withdrawn, was allowed  
 " to resume his seat. This proceeding is so di-  
 " rectly at variance with the practice of Courts  
 " Martial, and the principles of justice, that it may  
 " be held to affect the legality of the judgment of  
 " the Court." His Lordship, after commenting  
 on the finding, commences his concluding remarks  
 by stating, that the irregularity before observed,  
 has rendered nugatory the sentence of the Court  
 Martial. It can scarcely be necessary to remark,  
 that the occasional withdrawing of a Member for

any time, however limited, must suspend the examination of a witness. That which is in itself unjust and irregular, must be so, if tolerated in any degree.

4thly. At the opening of the Court, on Tuesday the fourth instant, before entering upon their defence, the Prisoners respectfully submitted a protest, setting forth certain reasons why they should not enter upon their defence. The Judge-Advocate, after having read aloud a few lines of that document, was interrupted by one or more of the Members of the Court, who declared that the paper now alluded to was insulting in its terms, and, therefore, it was rejected. The Counsel for the Prisoners respectfully suggested that it should be enregistered; but the Court peremptorily refused to take any cognizance of it; yet, that protest was couched in the most respectful language, and tended merely to put the Court upon its guard against proceeding to peril, by their deliberations, the lives of twelve men over whom it was contended, as we still humbly maintain, that tribunal had no jurisdiction. An attested copy of the Protest now referred to being herewith annexed, under the letter E, (1) your Excellency will have an opportunity of judging of its merits, and of considering how far the Court was authorized in refusing it a place on the record of the trial.

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(1) This Protest is literally the same as that which the reader had an opportunity of seeing in the course of this Report. It would be, therefore, useless to repeat it.

5thly. On the same day, the Prisoners, before proceeding to adduce evidence in their behalf, moved for the immediate discharge of Louis Lesiége, otherwise called Lesage dit Laviolette, on the ground that no legal evidence having been adduced against him, the eleven remaining Prisoners were, in law, entitled to the benefit of his testimony, which they alledged to be material to them, in their defence. The Motion, (2) which was read, and appears on record in the cause, was not granted, although the legality thereof was supported by a precedent so precisely in point, that we deem it advisable to quote it at full length:—*Petersdorf's Abridgement, verbo Martial Law and Courts Martial, 2, Stafford's case, H. T. 1801, K. B. 1 east, 306 :*" "The Mutineers of the "Bounty were tried by a Court Martial, at Portsmouth. There being no evidence against one "of the persons accused, it was insisted, on the "part of another of them, that he had a right to "examine the first on his behalf. The Court, "however, by the advice of the Judge-Advocate, "refused to let him be examined, saying, the practice of Courts Martial had always been against "it; and the prisoner was condemned to death: "but, upon the sentence being reported to the "King, execution was respited till the opinion of "the Judges was taken, who all reported against "the legality of the sentence, on the ground of

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(2) See the Trial.

“ the rejection of legal evidence ; and the party  
 “ was afterwards discharged.” The imperative  
 justice of granting such applications is so evident,  
 that it would be idle in us to dwell on the subject ;  
 suffice it to say, that the practice of Courts of  
 Law, founded on reason, have ever been ready  
 to grant motions of that nature, in order that the  
 prosecutor may, in no case, be allowed to deprive  
 a party accused, of his witnesses, by indicting them  
 conjointly with him. The only reason offered by  
 one of the learned Judge-Advocates, in support of  
 the decision of the Court, respecting this motion,  
 was that there appeared on record the testimony  
 of one witness, tending to implicate Lesiége ;  
 while, in Stafford’s case, cited by the Prisoners  
 as a precedent, no evidence had been adduced  
 against the individual whose discharge had been  
 demanded. But, it is indisputable, that, in a mat-  
 ter of this nature, where the evidence of two cre-  
 dible witnesses is required to convict the accused,  
 the maxim of the Civil Law, “ *unus testis, nullus  
 testis,*” must apply, and that the statement of one  
 witness, even when unimpeached, (and the testi-  
 mony of the witness now referred to was, in many  
 respects, so palpably false, as to elicit against him  
 severe animadversions from the same learned  
 Judge-Advocate,) cannot be regarded otherwise  
 than as a complete nullity. Moreover, in the case  
 of Muspratt and others, referred to by Simmons,  
 in the work above cited, p. 430, the sentence pas-  
 sed upon Muspratt by the Naval Court Martial,

before which he was arraigned, with nine others, for Mutiny, was set aside, in consequence of the Court having refused to discharge two of their number, Byrne and Norman, in order that Muspratt might call them as witnesses; although the evidence for the prosecution had affected Byrne and Norman to a certain extent, but not materially; and in declaring the illegality of the sentence, in so far as it concerned Muspratt, the twelve Judges of England were unanimous, as well as in Stafford's case.

6thly. In trials of Court Martial, it is necessary that every question, whether originating with the prosecutor, the prisoner, or a member of the Court, should be entered by the Judge-Advocate on the record of the proceedings. (*Vide Simmons, p. 189.*) This practice was departed from throughout the whole course of the trial of the Prisoners; and thus, many questions which tended to elicit answers favourable to them, were rejected without any formal deliberation; and the strenuous efforts made by their Counsel to procure the enregistration of such questions, proved unavailing. Had such questions been recorded, on a revision of the proceedings, it would have been obvious whether their rejection was justifiable, or not.

That such was the illegal practice followed during the trial, is established by *affidavits* of the Counsel who assisted the Prisoners. It would be too tedious to insert, in a document like this, all

the questions so proposed and rejected; but the undersigned Counsel, if required, can produce the greater part of them. We might dwell upon the illegality of the proceedings in various other instances, such as deliberations held and judgments rendered by the Court, subsequent to the hour of four in the afternoon, in direct contradiction of the Statute, the fact of the examination of one of the witnesses of the Crown having been carried on in a whisper, between the witness and the interpreter, through whose medium alone the answers of the former were conveyed to the Prisoners; but we feel confident that the statements which we have already fairly and conscientiously made on the subject, are more than sufficient to convince your Excellency of the correctness of our last proposition. It will, doubtless, be urged, by the learned Gentlemen who have superintended the proceedings upon this trial, that the Court by which the Prisoners were tried, is not an ordinary Court Martial, but a tribunal of a novel character, the mere creature of the Ordinance, arbitrary in its proceedings, and wholly untrammelled, either by the Articles of War, or the Common Law of the land.

It must appear strange that we should anticipate, from those learned Gentlemen, an argument so monstrous in its nature, so disastrous in its tendency, founded, as it is, upon a denial of the first principle of legal liberty, that *offence*, and *trial*,

and *punishment* should be fixed; and strange it would be, *passing strange!* had we not heard it urged sufficiently often to obviate all possibility of misconception on our part.

We have now concluded this tedious examination of the trial of the Prisoners, a task which we have imposed upon ourselves, not only from a sense of the imperative duty we owe our clients, whose lives may depend upon our exertions, but also from a deep and heartfelt conviction that, in fulfilling that duty, we would be vindicating, at the same time, the majesty of the law, which has been trampled upon, and asserting the rights of the subjects, which have been perilled by the dangerous precedent established in this case. In the performance of that task, we have abstained from exercising the ingenuity of the Advocate, and have taken an impartial view of the matter, guided solely, as we have been, by the unquenchable light of reason; for the broad principles of Law we have invoked, cannot be said to rest on any other foundation than on those feelings of justice and humanity, which the Supreme Ruler of nations has implanted in the breasts of all men.

We trust, that under the guidance of these rights, we have succeeded in convincing your Excellency of the correctness of the propositions we set out with, and in establishing, beyond a shadow of doubt, that the proceedings had in refer-

ence to the Prisoners, have been illegal, unconstitutional and unjust. If so, our object is attained."  
(Signed,)

A. P. HART,  
LEWIS T. DRUMMOND,  
*Attornies.*

Montréal, 20th December, 1838.

*Affidavits produced in support of the above Petition.*

(A.)

DISTRICT	}	DOM. REGINA,
OF		<i>vs.</i>
MONTREAL.		JOSEPH N. CARDINAL ET AL.

"Lewis Thomas Drummond, of the city of Montreal, Esquire, being duly sworn, deposeth and saith:—

That the Exceptions, (3) whereof a true copy is hereunto annexed, were, to the best of his belief, fyled by Joseph N. Cardinal and his fellow-prisoners, when arraigned before the Court Martial, which tried them for High Treason, and before pleading to the merits of the accusation preferred against them; and that, as the Deponent understood from one of the Deputy Judge Advocates of the said Court Martial; the said Exceptions which were overruled, appear upon the Record of the said Trial.

(3) See the Trial.



And further the Deponent saith not, and hath signed, the present Deposition having been read to him."

(Signed,)

LEWIS T. DRUMMOND.

Sworn before me, at Montreal, this 12th day of December, 1838.

(Signed,)

P. E. LECLERE, J. P.

(B.)

PROVINCE	}	DOM. REGINA,
OF		vs.
LOWER-CANADA.		JOSEPH N. CARDINAL ET AL.

" André Romuald Cherrier, of the city of Montreal, Student at Law, being duly sworn, deposeth and saith:—

That being present in Court, on Saturday, the first day of December instant, during the trial of the said Joseph N. Cardinal and others, he saw one of the Members of the Court, who was seated next to the President, on the left of him, the said President, (but whose name is unknown to this Deponent,) rise and withdraw from the Court for a short period of time, during which the examination of one of the witnesses for the prosecution was continued, and evidence taken and recorded. That on his return, the said Member of the Court resumed his seat. That on Wednesday, the fifth day of December instant, the two Members of the

Court, then occupying the first and second places on the right of the President, absented themselves from Court for a period of time not less than fifteen minutes, during which the evidence went on uninterruptedly, answers having been given and recorded during their absence; and on returning, the said two Members lastly alluded to, resumed their seats.

And further the Deponent saith not, and hath signed, the present Deposition having been read to him."

(Signed,)

ANDRE ROMUALD CHERRIER.

Sworn before me, at Montreal, this 12th day of December, 1838.

(Signed,)

P. E. LECLERE, J. P.

(C.)

DISTRICT	}	DOM. REGINA,
OF		vs.
MONTREAL.		JOSEPH N. CARDINAL ET AL.

"Lewis Thomas Drummond, of the city of Montreal, Esquire, Advocate, being duly sworn, deposeth and saith:—

That during the course of the trial of Joseph N. Cardinal and others, a certain Protest, whereof a true copy is hereunto annexed, was presented to the said Court Martial by the Prisoners,

previous to entering upon their defence, and rejected by the said Court Martial, the President refusing to allow the said Protest to be entered upon the Records of the Trial. That during the Trial, several of the Members of the Court Martial absented themselves from the Court for short periods of time, during which the examination of witnesses was carried on uninterruptedly. That on returning, the said Members of the said Court resumed their seats respectively.

And further the Deponent saith not, and hath signed, the present Deposition having been read to him."

(Signed,)

LEWIS T. DRUMMOND.

Sworn before me, at Montreal, this 12th day of December, 1838.

(Signed,)

P. E. LECLERE, J. P.

(D.)

PROVINCE	}	DOM. REGINA,
OF		vs.
LOWER CANADA.	}	JOSEPH N. CARDINAL & AL.

" Pierre Moreau, of the city and district of Montreal, Esquire, Advocate, being duly sworn, deposeth and saith :—

That he acted as Counsel for the Defendants in the above named cause, and assisted them before the Court Martial which tried them, between the twenty-eighth day of November last, and the sixth

day of December instant. That he was present in the said Court during the whole course of the said Trial, save during an absence of a few hours on the first day, and not more than a few minutes on any one of the subsequent days of the said Trial. That the questions proposed by this Deponent and the other Counsel employed by the Prisoners, were not, nor was any of them, enregistered on the Records of the said Trial, previous to being submitted for the approval of the Court. That several questions were proposed by the Deponent, and by his brother Counsel, on behalf of the Prisoners, which this Deponent deemed perfectly legal, and such as would have been unhesitatingly admitted before the ordinary Tribunals, and which, moreover, had a tendency to elicit answers favourable to the said Prisoners ; but the said questions were rejected. And the Deponent hath signed."

(Signed,)

PIERRE MOREAU.

Sworn before me, at Montreal, this 12th day of December, 1838.

P. E. LECLERE, J. P.

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N.B.—We are compelled, by circumstances, to suppress several other Documents, which should have found their place here, and were, in fact, printed, to form a portion of this Pamphlet.

*(Note of the Author.)*